

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. BILBOA and WILLIAM BORDA,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Nevada.

FILED
JAN 11 1923
F. D. MONCKTON,
CLERK.

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

Mr. E. T. PATRICK, of Carson City, Nevada, and
Messrs. HUSKEY & KUKLINSKI, of Reno,
Nevada,

For the Plaintiff in Error.

Honorable GEORGE SPRINGMEYER, United
States Attorney for the District of Nevada,
Reno, Nevada, and Mr. CHARLES A. CANT-
WELL, Assistant United States Attorney for
District of Nevada, Reno, Nevada,

For the Defendant in Error. [1*]

*Page-number appearing at foot of page of original Certified
Transcript of Record.

1

9 years continued until
was required to give bond
at the said time at my
and District aforesaid,
do will.

as surties thereon.
multinus committing
ination

ON.
S. MITCHELLS,
lay I committed
the same time a
T. S. Mitchell

victim of _____ By _____ v. _____,
_____ at _____ o'clock _____. Deputy.
_____, pursuant to the continuance of _____
brought before me, the said Commissioner, at my office _____ 19____.

Deputy U. S. Marshal:

the United States was represented by
U. S. Attorney, and the defendant, being present in person, was also represented by
his attorney; _____

was charged in the complaint, and
as offense, it was ordered that they
be discharged in the _____ Court, in
the _____ Division to be
_____ time to time thereafter to which
they are committed—be discharged.

have bond in the said
time and place, with
of execution thereon

al, was committed to my due process of law. this continuous with May, on I left at the same U. S. Marshal.

Deputy."
no time thereafter as

ced mitimus committing witness to the jail of pending trial of defendant.

mittimus, with the
he _____ day,
said mittimus, with
U. S. Marshal.

applied for discharge from _____, 19____,
against him by the United States
_____, on the _____ day of _____
_____ section _____
induced, said _____
day of _____, 19____

WITNESSES—Continued.

Residence.

lices of Defendant, in above recognizance

Joan Alder
Pete Iribarne

Search-Warrant.

The President of the United States of America:
To the Federal Prohibition Director for Nevada, and to His Deputies, or Any or Either of Them: GREETING:

WHEREAS, P. Nash has heretofore, to wit, on the 18th day of March, 1922, filed with me Anna M. Warren, a United States Commissioner in and for the District of Nevada, at Reno, Nevada, his affidavit in which he states that he is a Federal Prohibition Agent for Nevada; that he has knowledge and information that in and upon those certain premises & persons described as follows, to wit: Premises known as the French Hotel situated in the town of Gardnerville, Douglas County, State of Nevada, operated by one Borda, John Doe and Richard Roe, said premises to cover the bar-room, back rooms, kitchen, pantry, cupboards, lockers, safes, cellars, attics, outbuildings and the persons of the proprietors, employees and occupants thereof; there is possessed, concealed, kept, stored, sold and bartered, intoxicating liquor containing one-half of one per centum or more of alcohol by volume for beverage use, in violation of the National Prohibition Act; that it will be necessary to search the above-described premises and persons in order to obtain for the United States of America the said intoxicating liquor and all property used in the unlawful sale, concealment or destruction of the same, and that it will be impossible to make the said search without

the aid and use of a search-warrant; whereupon affiant prays that a search-warrant issue covering the above-described premises and persons.

That affiant sets forth in his affidavit as the particular grounds or probable cause for the issuance of a search-warrant the following facts, circumstances and conditions of which affiant has knowledge and as ascertained by affiant, to wit: That affiant has been informed by John Doe, whose true name has been given to the commissioner, that said informant purchased liquor in the said premises from the proprietor, said purchase being made since the 6th day of March, 1922. Affiant and other agents have investigated said premises and have seen persons coming away therefrom in an intoxicated condition, and from the said facts, circumstances and conditions I find that probable cause has been established for the issuance of a search-warrant as prayed for.

NOW, THEREFORE, pursuant to Section 25, Title II of the said National Prohibition Act, you are hereby commanded and directed to enter the above-described premises in the daytime or nighttime and each and every building on said premises and there to search the same and said persons for the above-mentioned intoxicating liquor so possessed, concealed, kept and stored in violation of the National Prohibition Act, and any property used in the unlawful sale, concealment or destruction thereof and seize and take the same into your possession and bring the same before me to the end that the said liquor and property may be dealt with according to

law, and to make due return hereof, with a written inventory of the liquor and property taken by you, or either of you, without delay.

WITNESS my hand this 18th day of March, 1922.

[Seal]

ANNA M. WARREN,
United States Commissioner.

[Endorsed]: Make return on within warrant as follows: Schd. premises as described within Mch. 19-12:15 A. M. Seized as evidence 1-Bottle containing wine from drain-board of Bar, 1-Bottle containing Liquor from floor behind bar, 1-glass on Bar, 1-Bottle Lashe's Bitters, 2-Bottles Hoffman's Tonic. I, H. P. Brown the officer who served the within warrant hereby certify on oath that the above inventory represents all the property taken under the warrant. H. P. Brown, Fed. Pro. Agt. Subscribed and sworn to before me this 20th March, 1921. P. B. Ellis, U. S. Commissioner. Filed Mar. 28, 1922, E. O. Patterson, Clerk U. S. Dist. Court, Dist. Nevada. By O. E. Benham, Deputy Clerk.
[3]

Affidavit of P. B. Ellis, United States Commissioner.

United States of America,
District of Nevada,
Division,—ss.

Before me, P. B. Ellis, a United States Commissioner for the District of Nevada, ——— Division, personally appeared this day H. P. Brown, who being first duly sworn, deposes and says that on or about the 19th day of March, A. D. 1922, At Gardnerville, Douglas County, in said District,

William Borda and J. Bilbas, in violation of N. P. Act of the Revised Statutes of the United States, did unlawfully, knowingly and willfully have in their possession a quantity of intoxicating liquor, containing one half of one per cent or more of alcohol by volume, said liquor being a quantity of wine and liquor—one half pint of latter—and about one fourth of a bottle of wine, being about one-fourth of a quart, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Deponent further says that he has reason to believe and does believe that H. P. Brown, P. Dubois, A. Carter are material witnesses to the subject matter of the complaint.

(Deponent's signature) H. P. BROWN.

Sworn to before me, and subscribed in my presence, this 20th day of March, A. D. 1922.

[Seal]

P. B. ELLIS,

United States Commissioner as Aforesaid. [4]

Filed Mar. 28, 1922. E. O. Patterson, Clerk
U. S. Dist. Court, Dist. Nevada. By O. E. Benham,
Deputy Clerk.

Warrant to Apprehend.

The President of the United States of America, to the Marshal of the United States for the District of Nevada, and to His Deputies, or Any or Either of Them:

WHEREAS, H. P. Brown has made complaint in writing under oath before me, the undersigned, a United States Commissioner for the District of

Nevada, ——— Division, charging that William Borda and J. Bilbas, late of Douglas County, in the State of Nevada, did, on or about the 19th day of March, A. D. 1922, at Gardnerville, in said District, in violation of N. P. A. Act of the Revised Statutes of the United States, unlawfully knowingly and wilfully have in their possession a quantity of intoxicating liquor, containing one half of one per cent or more of alcohol by volume, said liquor being a quantity of wine and liquor—one half pint of *of* latter, and about one-fourth of a bottle of wine, being about one-fourth of a bottle of wine, being about one-fourth of a quart, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, in the name of the President of the United States of America, to apprehend the said William Borda and J. Bilbas, wherever found in your District, and bring their bodies forthwith before me or any other Commissioner having jurisdiction of said matter, to answer the said complaint, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 20th day of March, A. D. 1922.

[Seal]

P. B. ELLIS,

United States Commissioner as Aforesaid.

Approved:

United States Attorney, ——— District of ———.

[Endorsed]: The United States of America vs. Wm. Borda and J. Bilbas. Warrant to Apprehend. Issued 20th day of Mch., 1922. Returned and filed 20 day of Mch., 1922. P. B. Ellis, U. S. Commissioner.

Criminal Docket No. 3365.

RETURN.

Received this Warrant on the 20th day of March, 1922, at Carson City, and executed the same by arresting the within named defendants at Carson City on the 20th day of March, 1922, and have their bodies now in court, as within I am commanded.

THOMAS PICKETT,

U. S. Marshal, District of Nevada,

Per J. P. Fordin,

Deputy.

20th day of March, 1922. [5]

Filed Mar. 28, 1922. E. O. Patterson, Clerk U. S. Dist. Court, Dist. Nevada. By O. E. Benham, Deputy Clerk.

Search Warrant issued by Comm'r Warren—Complaint—Warrant and Bond.

Preliminary hearing and plea waived by Defendants through their Att'y G. L. Frick or Gardnerville. [6]

[Endorsed]: The United States of America vs. William Borda, J. Bilbas. Transcript of Proceedings before P. B. Ellis, United States Commissioner for the — Dist. of Nevada, — Division. Certificate. The United States of America, — District of —, —ss. — Division. I, the under-

signed, a United States Commissioner for said District, do hereby certify that the within is a full and true transcript of the proceedings had by and before me in the above named cause, and of the costs therein, as recorded in my docket —, page 31; and that the papers numbered one to —, inclusive, accompanying this transcript, are the original papers in said cause; all of which are herewith transmitted into the — Court of the United States, within and for said District. Witness my hand and seal on this 21st day of March, 1922. P. B. Ellis, U. S. Commissioner as aforesaid.

Criminal Docket No. 3365.

Filed Mar. 28, 1922. E. O. Patterson, Clerk U. S. Dist. Court, Dist. Nevada. By O. E. Benham, Deputy Clerk.

In the District Court of the United States, in and for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WM. BORDA,

Defendants.

Information for Violation of the National Prohibition Act.

. At the May Term of said Court in the year of our Lord, one thousand nine hundred and twenty-two, be it remembered that George Springmeyer, Esq., United States Attorney for the District of Nevada, who for the United States and in its behalf prose-

cuted in his own proper person, comes into court on the 26th day of June, 1922, and with leave of said Court first had and obtained, gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, were made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents:

FIRST COUNT.

That J. BILBOA and WM. BORDA, hereinafter called the defendants, heretofore, to wit, on or about the 20th day of March, A. D. 1922, at Gardnerville, Douglas County, State and District of Nevada, and within the jurisdiction of this Court, after the date upon which the 18th Amendment [7] to the Constitution of the United States of America went into effect and before the filing of this Information in violation of Section 3, Title II, of the Act of Congress dated October 28, 1919, known as "The National Prohibition Act," did unlawfully, wilfully and knowingly have in their possession intoxicating liquor containing one half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes;

CONTRARY to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That J. BILBOA and WM. BORDA, hereinafter called the defendants, heretofore, to wit, on or about the 20th day of March, A. D. 1922 at Gardnerville, Douglas County, State and District of Nevada, and within the jurisdiction of this Court, after the date upon which the 18th Amendment to the Constitution of the United States of America went into effect and before the filing of this Information, in violation of Section 3, Title II, of the Act of Congress dated October 28, 1919, known as "The National Prohibition Act," did unlawfully, wilfully and knowingly sell intoxicating liquor containing one half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes;

CONTRARY to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [8]

THIRD COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That J. BILBOA and WM. BORDA, hereinafter called the defendants, heretofore, to wit, on or about the 20th day of March, A. D. 1922, at Gardnerville, Douglas County, State and District of Nevada, and within the jurisdiction of this Court, after the date upon which the 18th Amendment to the Constitution of the United States of America went into effect and before the filing of this Information, in violation of Section 21, Title II of the Act of Congress dated October 28, 1919, known as "The National Prohibition Act," did unlawfully, wilfully and knowingly maintain a common nuisance, in that

the said defendants did keep in that certain building situate at Gardnerville, Douglas County, State and District of Nevada, known as and called the "French Hotel," intoxicating liquor for sale; said liquor containing one half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes;

CONTRARY to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

GEORGE SPRINGMEYER,

United States Attorney. [9]

United States of America,
District of Nevada,—ss.

H. P. Brown, being first duly sworn, deposes and says:

That he is now and at all times hereinafter mentioned was Federal Prohibition Agent for the District of Nevada.

That on or about March 20th, 1922 at Gardnerville, Douglas County, State and District of Nevada, the said defendants, J. Bilboa and Wm. Borda, had in their possession intoxicating liquor containing one half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes; that said defendants did then and there sell intoxicating liquor containing one half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes; and that said defendants did then and there in that certain building called "The French Hotel," keep for sale intoxicating liquor containing one half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes.

H. P. BROWN.

Subscribed and sworn to before me this 24th day of June, A. D. 1922.

[Seal]

ANNA M. WARREN,
Notary Public.

[Endorsed]: No. 5610. In the District Court of the United States for the District of Nevada, United States of America, Plaintiff, vs. J. Bilboa and Wm. Borda, Defendants. Information. Filed June 26, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy. [10]

Bench-Warrant.

United States of America,
District of Nevada.

To the Marshal of the United States for the District of Nevada, and to His Deputies, and Any or Either of Them—GREETING:

WHEREAS, at a District Court of the United States of America, begun and held at Carson City, Nevada, within and for the District aforesaid, on the 1st day of May, 1922, the District Attorney in and for said District brought into said court an Information against J. Bilboa and Wm. Borda, charging them with the crime of having on or about March 20th, 1922, at Gardnerville, in the county of Douglas, District of Nevada, violated the National Prohibition Act, as by said Information now remaining on file and of record in said court more fully appears, to which Information the said J. Bilboa and Wm. Borda hath not yet appeared or pleaded.

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, in the name of the President of the United States, to apprehend the said J. Bilboa and Wm. Borda and bring them before said Court in Carson City, Nevada, to answer unto said Information forthwith, or, if they require it that you take them before the Judge of said Court, or any United States Commissioner in said District, that they may give bail in the sum of \$1500.00 each to answer to said Information.

WITNESS, the Honorable E. S. FARRINGTON, Judge of said District Court, and the seal thereof hereunto affixed, at Carson City, Nevada, this 26th day of June, 1922.

[Seal]

Attest: E. O. PATTERSON,

Clerk.

By O. E. Benham,

Deputy.

GEORGE SPRINGMEYER,

U. S. Attorney. [11]

Information for Violation of National Prohibition
Act.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

Minutes of Court—August 14, 1922—Trial.

This cause coming on regularly for trial this day,

Mr. George Springmeyer, United States Attorney, appeared for and on behalf of the plaintiff; Mr. E. T. Patrick, for the defendants, the defendants being personally present. Thereupon the said defendants were duly arraigned upon the information as required by law. They each declared their true names to be as stated in the information and each entered a plea of not guilty. Mr. Patrick moved the Court for an order allowing separate trials to each of these defendants which motion was opposed by the United States Attorney;

IT IS ORDERED that the motion for separate trials in this case be, and the same is hereby, denied. The following named jurors were accepted by the parties and sworn to try the issue, viz.: Alphons Glock, Henry R. Burlington, Thos. J. Heidenreich, F. H. Summers, Charles J. Davenport, John J. Quinn, Paul S. Thompson, J. W. Black, Ralph D. Bath, E. D. Blake, Frederic J. Pierson and Geo. W. Wilson. At 4:15 the jury was admonished by the Court not to talk among themselves about the case nor to allow others to discuss it in their presence or talk to them about it and to refrain from making up their minds as to what their verdict would be until the case was finally submitted to them, etc., and were excused until to-morrow at ten o'clock.

Information for Violation National Prohibition
Act.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

**Minutes of Court—August 15, 1922—Trial (Con-
tinued).**

The further trial of this case was resumed at this time, the jury, counsel and the defendants being present. The Court instructs the jurors that if any of them have any conscientious scruples or if they now think they will be unable to follow the instructions of the Court they should make the fact known now. No replies forthcoming. Upon motion of Mr. Patrick plaintiff's witnesses who were at this time in attendance upon the Court were marshalled and sworn as follows, viz.: A. Carter, H. P. Brown and P. E. DuBois, and they were instructed as to the rule by the Court. Mr. A. Carter, P. E. Dubois and H. P. Brown were each called in turn and testified on behalf of plaintiff; also Mr. S. C. Dinsmore was duly sworn upon his arrival and testified for plaintiff. During this testimony plaintiff offered and had admitted and ordered marked, one wine glass and one whisky glass as Plff.'s Ex. No. 1 and 2; one white quart bottle containing one inch of wine as Plff.'s Ex. No. 3; one half pint flask containing dregs of liquor as Plff.'s Ex. No. 4; and one broken wine glass as Plff.'s Ex. No. 5. Plain-

tiff rests. Mr. S. C. Dinsmore called by defendant and Messrs. J. Bilboa, E. Aranda sworn as Spanish Interpreter, Wm. Borda, Fred Urdaburn sworn as French Interpreter, and E. O. Patterson all duly sworn and testified [12] for the defendants. Defendants rest. Upon motion of Mr. Patrick, and after argument by counsel for the respective parties,

IT IS ORDERED that Plff.'s Ex. No. 4 be excluded as against Wm. Borda and withdrawn from the consideration of the jury as against him. No further testimony being adduced, and after argument by counsel for the respective parties the case was submitted. Thereupon, and after hearing the instructions given by the Court, the jury retired in charge of the Marshal to deliberate on the case, and at 7:35 P. M. came into the Court with the following verdict, viz.: "In the District Court of the United States for the District of Nevada. The United States vs. J. Bilboa and Wm. Borda. No. 5610. We the Jury in the above-entitled case, find the defendant, J. Bilboa, guilty as charged in the first count of the information; guilty as charged in the second count; and not guilty as charged in the third count. Dated this 15th day of August, 1922. Geo. W. Wilson, Foreman." "In the District Court of the United States for the District of Nevada. The United States vs. J. Bilboa and Wm. Borda. No. 5610. We, the Jury in the above-entitled case, find the defendant, Wm. Borda, not guilty as charged in the first count of the information; guilty as charged in the second count; and

not guilty as charged in the third count. Dated this 15th day of August, 1922. Geo. W. Wilson, Foreman," and so they all say.

ORDERED, that these defendants appear in this court to-morrow at 1:30 P. M. for sentence. [13]

In the District Court of the United States for the
District of Nevada.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

Verdict—Wm. Borda.

We, the Jury in the above-entitled case, find the defendant, Wm. Borda, not guilty as charged in the first count of the Information; guilty as charged in the second count; and not guilty as charged in the third count.

Dated this 15th day of August, 1922.

GEO. W. WILSON,

Foreman.

[Endorsed]: No. 5610. U. S. District Court, District of Nevada. The United States vs. J. Bilboa and Wm. Borda, Verdict. Filed this 15th day of August, 1922. E. O. Patterson, Clerk.

In the District Court of the United States for the
District of Nevada.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

Verdict—J. Bilboa.

We, the Jury in the above-entitled case, find the defendant, J. Bilboa, guilty as charged in the first count of the Information; guilty as charged in the second count; and not guilty as charged in the third count.

Dated this 15th day of August, 1922.

GEO. W. WILSON,
Foreman.

[Endorsed]: No. 5610. U. S. District Court, District of Nevada. The United States vs. J. Bilboa and Wm. Borda, Verdict. Filed this 15th day of August, 1922. E. O. Patterson, Clerk. [14]

In the District Court of the United States for the
District of Nevada.

Honorable E. S. FARRINGTON, Judge.

May Term, 1922.

Violation National Prohibition Act.

No. 5610.

UNITED STATES OF AMERICA

vs.

J. BILBOA and WM. BORDA.

Judgment—J. Bilboa.

This being the time heretofore appointed for passing sentence in this case, the Court pronounced judgment as follows, addressing the defendant:

An Information has been filed against you, J. Bilboa, for the crime of violating the National Prohibition Act by unlawfully, wilfully and knowingly having in your possession intoxicating liquor containing one half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes; for unlawfully, wilfully and knowingly selling intoxicating liquor; and unlawfully, wilfully and knowingly maintaining a common nuisance by the keeping of intoxicating liquor for sale in that certain building situated at Gardnerville, Douglas County, Nevada, known as and called the "French Hotel"; said crimes having been committed on the 20th day of March, 1922, at Gardnerville, Douglas County, State and District of Nevada, and within the jurisdiction of this court. You were duly arraigned upon that Information, as required by law, and on being called upon to plead thereto you pleaded not guilty. At a subsequent day you were placed on trial, by a jury of your own selection, and by the verdict of that jury you were found guilty as charged in the first and second counts of the Information. The defendant was then asked if he had any legal cause to show why the judgment of the court should not now be pronounced against him. To which he replied that he had not.

In consideration of the law and the premises, it is hereby ordered and adjudged that you be im-

prisoned in the county jail of Washoe County, Nevada, for the period of Four (4) Months from and after this date and pay to the United States a fine of Two Hundred Fifty (\$250.00) Dollars, and that you stand committed in said county jail until the fine is paid.

Dated and entered August 16, 1922.

Attest: E. O. PATTERSON,

By O. E. Benham,

Deputy. [15]

In the District Court of the United States for the District of Nevada.

Honorable E. S. FARRINGTON, Judge.

May Term 1922.

Violation National Prohibition Act.

No. 5610.

UNITED STATES OF AMERICA

vs.

J. BILBOA and WM. BORDA.

Judgment—Wm. Borda.

This being the time heretofore appointed for passing sentence in this case, the Court pronounced judgment as follows, addressing the defendant:

An Information has been filed against you, Wm. Borda, for the crime of violating the National Prohibition Act by unlawfully, wilfully and knowingly having in your possession intoxicating liquor containing one half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes;

for unlawfully, wilfully and knowingly selling intoxicating liquor; and unlawfully, wilfully and knowingly maintaining a common nuisance by the keeping of intoxicating liquor for sale in that certain building situated at Gardnerville, Douglas County, Nevada, known as and called the "French Hotel"; said crimes having been committed on the 20th day of March, 1922, at Gardnerville, Douglas County, State and District of Nevada, and within the jurisdiction of this court. You were duly arraigned upon that Information, as required by law, and on being called upon to plead thereto you pleaded not guilty. At a subsequent day you were placed on trial, by a jury of your own selection, and by the verdict of that jury you were found guilty as charged in the second count of the Information. The defendant was then asked if he had any legal cause to show why the judgment of the court should not now be pronounced against him. To which he replied that he had not.

In consideration of the law and the premises, it is hereby ordered and adjudged that you be imprisoned in the county jail of Washoe County, Nevada, for the period of Four (4) Months from and after this date.

Dated and entered August 16, 1922.

Attest: E. O. PATTERSON,
Clerk.

By O. E. Benham,
Deputy. [16]

In the District Court of the United States in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

**Motion for Vacation of Judgment and for New
Trial.**

Come now the defendants above-named and jointly and severally move the Court that the judgment and sentence pronounced against each of them be vacated as to each of said defendants, jointly and severally, and that the Court grant a new trial to said defendants and each of them for the following reasons, and on the following grounds, to wit:

I.

That the Court erred in its decisions upon questions of law arising during the course of the trial.

II.

That the Court misdirected the jury in matters of law and fact.

III.

That the verdict of the jury is contrary to the law.

IV.

That the verdict of the jury is contrary to the evidence.

V.

That said verdict as to each and all of said defendants is not supported by the evidence.

Dated this 21st day of August, 1922.

E. T. PATRICK,
Attorneys for Defendants.
HUSKEY & KUKLINSKI,
Of Counsel.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Motion for a Vacation of Judgment and Motion for a New Trial. Filed Aug. 22, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys at Law, Reno, Nevada. [17]

Indictment for Violation of National Prohibition Act.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

Minutes of Court—August 22, 1922—Motion for Vacation of Judgment.

Mr. O. G. Kuklinski appeared this day and moved the Court for an order vacating the judgment as against both of these defendants, filed his petition for a writ of error and asked that bond be fixed for the release of said defendants pending the hearing of his motion. Mr. Kuklinski was allowed to withdraw, until Monday next, his petition for writ of

error. Matter taken under advisement by the Court.

Information for Violation National Prohibition
Act.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

Minutes of Court—August 28, 1922—Order Denying Motion for New Trial.

These defendants appeared this day with their attorney, Mr. O. G. Kuklinski, who filed his motion for a new trial, which was submitted without argument.

IT IS ORDERED that the motion for a new trial in this case be, and the same is hereby, denied. Thereupon Mr. Kuklinski filed his petition for a writ of error, assignment of errors and writ of error. Mr. Kuklinski asked and was granted the benefit of an exception to the Court's ruling denying a new trial.

(Here follows order allowing writ of error as embodied elsewhere in this record.) [18]

In the District Court of the United States for the
District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Petition for Writ of Error.

To the Honorable W. S. FARRINGTON, Judge of
the District Court of the United States, for the
District of Nevada.

Now, come J. Bilboa and William Borda, the defendants in the above-entitled cause, and feeling themselves aggrieved by the verdict of the jury and the judgment of the District Court of the United States for the District of Nevada, made and entered on the 16th day of August, A. D. 1922, hereby petition, jointly and severally, for an order allowing them, said defendants, to prosecute a writ of error to the United States Circuit Court of Appeals of the Ninth Circuit from the District Court of the United States for the District of Nevada, and also pray the Court that a transcript of the record, testimony, exhibits, stipulations, proceedings and papers, duly authenticated, may be prepared and sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that said writ of error may be made a supersedeas and that your petitioners be released on bail in an amount to be fixed by the

Judge of said District Court pending the final disposition of said writ of error.

The assignment of error is presented herewith.
Dated this 28th day of August, 1922.

E. T. PATRICK,
Attorney for Defendants.
HUSKEY & KUKLINSKI,
Of Counsel.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Petition for Writ of Error. Filed Aug. 28, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys at Law, Reno, Nevada. [19]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Order Allowing Writ of Error.

On this 28th day of August, A. D. 1922, came the defendants, J. Bilboa and William Borda, by their attorneys, Messrs. Huskey & Kuklinski, and filed herein and presented to the Court their petition praying for the allowance of a writ of error and

assignment of error intended to be used by them, praying also that a transcript of the record, testimony, exhibits, stipulations, proceedings and papers, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that such other and further proceedings may be had as may be proper in the premises.

IN CONSIDERATION WHEREOF, the Court allows a writ of error, upon the defendants, J. Bilboa and William Borda, each giving a bond according to law in the sum of Four Thousand Dollars (\$4,000.00), which shall operate as a supersedeas bond, and that upon the accepting, filing and approval of said bond, the said defendants shall be and they are hereby ordered to be released from custody.

Done in open court this 28th day of August, A. D. 1922.

E. S. FARRINGTON,

District Judge.

I sign this order but in so doing I am obliged to say that the assignments of error have not been drawn altogether in accordance with rule 11 of the Circuit Court of Appeals.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Order Allowing Writ of Error. Filed Aug. 28, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy. Huskey & Kuklinski, Attorneys at Law, Reno, Nevada.

(Above order entered Aug. 28th, 1922, in Law Journal.) [20]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Bond on Writ of Error.

WHEREAS the defendants, J. Bilboa and William Borda, in the above-entitled action, have sued out a writ of error through the United States Circuit Court of Appeals for the Ninth Circuit to the said United States District Court for the District of Nevada, from a judgment made and entered against them in said above-entitled cause in said United States District Court for the District of Nevada on the 16th day of August, A. D. 1922, or thereabouts; and

WHEREAS, the defendants by an order of Court heretofore duly made and entered are required to enter into a bond in the sum of Five Hundred Dollars (\$500.00) to guarantee the payment of all costs in said cause.

NOW, THEREFORE, in consideration of the premises and of the suing out of said writ of error to the said Court of Appeals for the Ninth District of the United States, we, the undersigned, residents

of the County of Douglas, State of Nevada, do hereby jointly and severally undertake and promise on the part of the said J. Bilboa and William Borda that the said persons will pay all damages and costs which may be awarded against them on account of said writ of error or on the dismissal thereof, not exceeding the sum of Five Hundred Dollars (\$500.00), in which amount we acknowledge ourselves jointly and severally bound.

WITNESS our signature this 29th day of August, A. D. 1922.

PETER IRIBARNE.

C. F. W. DANGBERG. [21]

State of Nevada,

County of Washoe,—ss.

Peter Iribarne and C. F. W. Dangberg, each for himself and not one for the other, being first duly sworn, deposes and says: That he is a resident and householder of the County of Washoe, State of Nevada, and is the same identical person who signed the above and foregoing bond and undertakig; that he is worth the sum of Five Hundred Dollars (\$500) over and above all indebtedness and in property subject to execution.

PETER IRIBARNE.

C. F. W. DANGBERG.

Subscribed and sworn to before me this 29th day of August, A. D 1922.

[Seal]

ANNA M. WARREN,

U. S. Commissioner.

My commission expires ———, 192—.

Approved as to form and sureties August 30,
1922.

GEORGE SPRINGMEYER,
U. S. Attorney.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. *Bail Bond on Writ of Error.* Huskey & Kuklinski, Attorneys at Law, Reno, Nevada. Filed Aug. 31 1922. E. O. Patterson, Clerk By O. E. Benham, Deputy. [22]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Bail Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, William Borda, of the County of Douglas, State of Nevada, as principal, and Peter Iribarne and C. F. W. Dangberg of the County of Douglas, State of Nevada, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of Four Thousand Dollars (\$4,000.00), to which payment well and truly be

made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 29th day of August in the year of our Lord, one thousand nine hundred and twenty-two.

WHEREAS, lately on the 16th day of August, A. D. 1922, at a term of the District Court of the United States for the District of Nevada, in a cause pending in said court between the United States of America, plaintiff, and J. Bilboa and William Borda, defendants, a judgment and sentence was rendered against said defendants as follows, to wit:

That said J. Bilboa be imprisoned for not less than four months in the Washoe County jail, at Reno, Nevada, and in addition be fined in the sum of Two Hundred Fifty Dollars (\$250.00).

That said William Borda be imprisoned for not less than four months in the Washoe County jail, at Reno, Nevada. [23]

WHEREAS, the said defendant, William Borda, obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the said United States District Court for the District of Nevada, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the said court 30 days from and after the date thereof, which citation has been fully served.

Now, the condition of said obligation is such,

that if the said J. Bilboa and William Borda shall prosecute said writ of error to effect, and shall appear in person in the United States Circuit Court of Appeals for the Ninth Circuit, when said cause is reached for argument or when required by law or rule of said court, and from day to day thereafter in said court until such cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the said Court of Appeals, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence against him shall be affirmed, and if he shall appear for trial in the District Court of the United States for the District of Nevada, on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders of said Court, provided the judgment and sentence against them shall be reversed by the United States Circuit Court of Appeals, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

WILLIAM BORDA, (Seal)
Principal.

PETER IRIBARNE, (Seal)
Surety.

C. F. W. DANGBERG, (Seal)
Surety. [24]

State of Nevada,
County of Washoe,—ss.

Peter Iribarne and C. F. W. Dangberg, sureties

on the annexed foregoing undertaking, being first duly sworn, each for himself and not one for the other, deposes and says: That he is a resident and freeholder within the County of Douglas, State of Nevada; and that he is worth the sum of Four Thousand Dollars (\$4,000.00), over and above all his just debts and liabilities, in property not exempt from execution.

PETER IRIBARNE.

C. F. W. DANBERG.

Subscribed and sworn to before me this 29th day of August, 1922.

[Seal]

ANNA M. WARREN,

United States Commissioner for the District of Nevada.

Approved as to form and sureties August 30, 1922.

GEORGE SPRINGMEYER,

U. S. Attorney.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendant. Bail Bond on Writ of Error. Huskey & Kuklinski, Attorneys at Law, Reno, Nevada. Filed Aug. 31, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy.
[25]

In the District Court of the United States in and
for the District of Nevada

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,

Defendants.

Bail Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:

That we, J. Bilboa, of the County of Douglas, State of Nevada as principal, and Peter Iribarne and C. F. W. Dangberg, of the County of Douglas, State of Nevada, as sureties, are held and firmly bound unto the United States of America, in the full sum of Four Thousand Dollars (\$4,000.00), to which payment well and truly be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 29th day of August, in the year of our Lord, one thousand nine hundred and twenty-two.

WHEREAS, lately on the 16th day of August, A. D. 1922, at a term of the District Court of the United States for the District of Nevada, in a cause pending in said court between the United States of America, plaintiff, and J. Bilboa and William Borda, defendants, a judgment and sentence was rendered against said defendants as follows, to wit:

That said J. Bilboa be imprisoned for not less than four months in the Washoe County jail, at Reno, Nevada, and in addition be fined in the sum of Two Hundred Fifty Dollars (\$250.00).

That said Willam Borda be imprisoned for not less than four months in the Washoe County jail, at Reno, Nevada.

WHEREAS, the said defendant, J. Bilboa, obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the said United States District Court for the District of [26] Nevada, to reverse the judgment and sentence in the aforesaid suit and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the said court 30 days from and after the date thereof, which citation has been fully served.

Now, the condition of said obligation is such, that if the said J. Bilboa and William Borda shall prosecute said writ of error to effect, and shall appear in person in the United States Circuit Court of Appeals for the Ninth Circuit, when said cause is reached for argument or when required by law or rule of said court, and from day to day thereafter in said court until such cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the said Court of Appeals, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, if the

judgment and sentence against him shall be affirmed, and if he shall appear for trial in the District Court of the United States for the District of Nevada, on such days or days as may be appointed for a re-trial by said District Court and abide by and obey all orders of said Court, provided the judgment and sentence against them shall be reversed by the United States Circuit Court of Appeals, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

J. BILBOA, (Seal)

Principal.

PETER IRIBARNE, (Seal)

Surety.

C. F. W. DANGBERG, (Seal)

Surety. [27]

State of Nevada,
County of Washoe,—ss.

Peter Iribarne and C. F. W. Dangberg, sureties on the annexed and foregoing undertaking, having first duly sworn, each for himself and not one for the other, deposes and says: That he is a resident and freeholder within the County of Douglas, State of Nevada; and that he is worth the sum of Four Thousand Dollars (\$4,000.00) over and above all his just debts and liabilities, in property not exempt from execution.

PETER IRIBARNE.

C. F. W. DANGBERG.

Subscribed and sworn to before me this 29th day of August, 1922.

[Seal]

ANNA M. WARREN,
United States Commissioner for the District of
Nevada.

Approved as to form and sureties August 29,
1922.

GEORGE SPRINGMEYER,
U. S. Attorney.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Bail Bond on Writ of Error. Huskey & Kuklinski, Attorneys at Law, Reno, Nevada. Filed Aug. 31, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy.
[28]

In the District Court of the United States, in and
for the Distrnet of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Assignment of Errors.

Come now the defendants above named and file the following assignment of errors upon which they will rely upon the prosecution of the writ of error in the above-entitled cause from the judg-

ment made and entered by this Honorable Court on the 16th day of August, 1922.

I.

That the United States District Court erred in denying defendant's motion for vacation of judgment.

That there is no evidence to support the verdict and that this error is manifest in the record; that there is no evidence to show guilty knowledge of the defendants as to the alleged liquor found on said premises, and that this error is manifest in the record.

III.

That the Court ignored the element of knowledge in its instructions and that this error is manifest in the record.

IV.

That the verdict of the jury is contrary to the evidence and that this error is patent and manifest in the record.

V.

That the verdict of the jury is contrary to the law and this error is patent and manifest in the record.

WHEREFORE plaintiffs in error pray that the judgment [29] aforesaid be reversed and the cause remanded for such other and further proceedings as may be proper in the premises.

Respectfully submitted,

E. T. PATRICK,

Attorney for Defendant.

HUSKEY & KUKLINSKI,

Of Counsel.

[Endorsed]: No. 5610. In the District Court of the United States in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendant. Assignment of Errors. Filed Aug. 28, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys at Law, Reno, Nevada. [30]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,

Defendants.

Praeipce for Transcript of Record.

To E. O. Patterson, Clerk U. S. District Court,
Carson City, Nev.

We hereby request that you prepare for us copies of the records in the case of the United States vs. J. Bilboa and William Borda, as follows:

1. Copies of proceedings before the United States Commissioner, Anna M. Warren, including

(a) Copy of all testimony taken before said Anna M. Warren.

(b) Copy of any other papers or proceedings not included in the above had or taken before the said Commissioner and particularly affidavit upon which information was based.

2. Copy of minutes of Clerk of court showing the Court's ruling upon all motions and objections and exceptions.

3. Copy of information.

4. Complete transcript of testimony and instructions and notes taken by stenographer in said cause, this to be made part of bill of exceptions.

5. Copy of verdict of jury.

6. Copy of judgment and sentence.

7. Copy of motion for new trial and vacation of judgment.

8. Copy of petition for writ of error.

9. Copy of order allowing writ of error.

10. Copy of assignment of errors.

11. Copy of citation.

12. Copy of supersedeas bond.

13. Copy of cost bond.

E. T. PATRICK,

HUSKEY & KUKLINSKI,

Attorneys for Defendants.

[Endorsed]: No. 5610. In the United States District Court, for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Praecipe. Filed Sept. 1, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys at Law, Reno, Nevada. [31]

**Letter Dated September 6, 1922—O. G. Kuklinski
to E. O. Patterson.**

H. Walter Huskey.

Otto G. Kuklinski.

**HUSKEY & KUKLINSKI,
Attorneys and Counselors,
Reno, Nevada.**

September,
Sixth,
1922.

Mr. E. O. Patterson,
Clerk, U. S. District Court,
Carson City, Nevada.
No. 5610—U. S. vs. Bilbao et.

Dear Mr. Patterson:

Answering your letter of September first, I will state that the Praeipie was made out by me, thinking that testimony had been taken before the Commissioner, but since it has not been transcribed you may omit that from the record.

No more than your "Transcript og Proceedings in Criminal Cases" will be necessary under my request as to proceedings had before the Commissioner. Since the affidavit made in the case is part of the information it will not be necessary to make another copy of it.

Miss Torreyson advises me that a deposit of Forty-five Dollars will cover cost of transcribing testimony and instructions, I am therefore enclosing check for same and ask you to have Miss Torreyson

complete same as soon as she can and then take the original and file it for me sending me the copy.

Thanking you for this favor and the many other courtesies received from you, with kindest regards I beg to remain

Very truly yours,
(Signed) O. G. KUKLINSKI. [32]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

**Stipulation Extending Time to and Including Oc-
tober 29, 1922, to File Bill of Exceptions.**

It is hereby stipulated by and between counsel for the respective parties herein that defendants may have to and including the 29th day of October in which to prepare and file their bill of exceptions in the District Court and to file their papers on appeal, in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 19th day of September, 1922.

O. G. KUKLINSKI,
HUSKEY & KUKLINSKI,
Attorneys for Defendants.
GEORGE SPRINGMEYER,
United States Attorney.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Stipulation. Filed Sept. 21, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy. Huskey & Kuklinski, Attorneys for Defendants. [33]

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,

Defendants.

Order Extending Time to and Including October 29, 1922, to File Bill of Exceptions.

Upon the stipulation of counsel for the parties herein and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that the defendants herein be and they hereby are granted to and including October 29th, 1922, within which to prepare and file their bill of exceptions and papers on appeal in the United States District Court of Appeals for the Ninth Circuit.

Dated this 20th day of September, 1922.

E. S. FARRINGTON,

Judge.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa

and William Borda, Defendants. Order Extending Time to File Bill of Exceptions and to File Papers in the United States Circuit Court of Appeals. Filed Sep. 21, 1922. E. O. Patterson, Clerk. By. O. E. Benham, Deputy. Huskey & Kuklinski, Attorneys for Defendants.

(Above order entered Sept. 20, 1922 in Law Journal.) [34]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Stipulation Extending Time to and Including November 9, 1922, to File Bill of Exceptions.

It is hereby stipulated by and between counsel for the respective parties herein that the defendants above named may have to and including the ninth (9th) day of November, 1922, in which to prepare and file their bill of exceptions in the above-entitled case and to file the record of this case in the Circuit Court of Appeals, San Francisco, California.

Dated this 24th day of October, 1922.

HUSKEY & KUKLINSKI,
Attorneys for Defendants.
GEORGE SPRINGMEYER,
United States Attorney.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Stipulation. Filed Oct. 25, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys for Defendants. [35]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,

Defendants.

**Order Extending Time to and Including November
9, 1922, to File Bill of Exceptions.**

Upon stipulation of counsel for the respective parties herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that the defendants above named may have to and including the ninth (9th) day of November, 1922, in which to prepare and file their bill of exceptions and in which to file the record in this case in the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California.

Dated October 25th, 1922.

E. S. FARRINGTON,

District Judge.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada.

United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Order Extending Time. Filed Oct. 25, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys for Defendants.

(Above order entered Oct. 25, 1922, in Law Journal.) [36]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Stipulation Extending Time to and Including November 29, 1922, to File Bill of Exceptions.

It is hereby stipulated by and between counsel for the respective parties herein that the defendants may have to and including the twenty-ninth (29th) day of November, 1922, in which to prepare and file their Bill of Exceptions and the record on Writ of Error in this case in the Circuit Court of Appeals at San Francisco, California.

Dated this 1st day of November, 1922.

HUSKEY & KUKLINSKI,
Attorneys for Defendants.

GEORGE SPRINGMEYER,
United States Attorney.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada.

United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Stipulation. Filed Nov. 3, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys for Defendants. [37]

In the District Court of the United States, in and for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Order Extending Time to and Including November 20, 1922, to File Bill of Exceptions.

Upon stipulation of counsel for the respective parties herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that the defendants above named may have to and including the twentieth (20th) day of November, 1922, in which to prepare and file their bill of exceptions and in which to file the record in this case in the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California.

Dated November 3d, 1922.

E. S. FARRINGTON,
District Judge.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa

and William Borda, Defendants. Order Extending Time. Filed Nov. 3, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys for Defendants.

(Above order entered Nov. 3d, 1922 in Law Journal.) [38]

Information for Violation National Prohibition Act.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

Minutes of Court—November 17, 1922—Order Exonerating Bonds upon Appeal and that New Ones be Filed in Lieu Thereof.

Upon motion of Mr. George Springmeyer, United States Attorney, and upon his showing that Mr. C. F. W. Dangberg, one of the bondsmen herein upon the bond upon appeal, desires to withdraw therefrom,

IT IS ORDERED that a new bond be filed herein, in lieu of the old bond upon appeal, to be approved by the United States Attorney and this Court, and the old bond be, and the same is hereby, exonerated and the bondsmen thereon are released and discharged from any liability to be hereafter incurred upon said first mentioned bond. [39]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,

Defendants.

Bail Bond on Writ of Error.

WHEREAS the defendants, J. Bilboa and William Borda, in the above-entitled action, have sued out a writ of error through the United States Circuit Court of Appeals for the Ninth Circuit to the United States District Court for the District of Nevada, from a judgment made and entered against them in said above-entitled cause in said United States District Court for the District of Nevada on the 16th day of August, A. D. 1922, or thereabouts; and

WHEREAS, the defendants by an order of Court heretofore duly made and entered are required to enter into a bond in the sum of Five Hundred Dollars (\$500.00) to guarantee the payment of all costs in said cause,

NOW, THEREFORE, in consideration of the premises and of the suing out of said writ of error to the said Court of Appeals for the Ninth District of the United States, we, the undersigned, residents of the County of Douglas, State of Nevada, do hereby jointly and severally undertake and promise on the part of the said J. Bilboa and William Borda

that the said persons will pay all damages and costs which may be awarded against them on account of said writ of error or on the dismissal thereof, not exceeding the sum of Five Hundred Dollars (\$500.00), in which amount we acknowledge ourselves jointly and severally bound. [40]

Witness our signature this 16th day of November,
A. D. 1922.

PETER IRIBARNE.
JOHN ELISONDOBERRY.

State of Nevada,
County of Washoe,—ss.

Peter Iribarne and John Elisondoberry, each for himself and not one for the other, being first duly sworn, deposes and says: That he is a resident and householder of the County of Douglas as to Peter Iribarne, Ormsby County as to John Elisondoberry, State of Nevada, and is the same identical person who signed the above and foregoing bond and undertaking; that he is worth the sum of Five Hundred Dollars (\$500.00) over and above all indebtedness and in property subject to execution.

PETER IRIBARNE.
JOHN ELISONDOBERRY.

Subscribed and sworn to before me this 16th day
of November, 1922.

[Seal]

E. O. PATTERSON,
Clerk U. S. District Court.
By O. E. Benham,
Deputy.

Approved as to form and sureties November 19,
1922.

GEORGE SPRINGMEYER,
U. S. Attorney.

E. S. FARRINGTON,
U. S. Dist. Judge.

[Endorsed]: 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Bail Bond on Writ of Error. Filed Nov. 17th, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys, Reno, Nevada. [41]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Bail Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, William Borda, of the County of Douglas,
State of Nevada, as principal, and Peter Iribarne
and John Elisondoberry, of the County of Douglas,
State of Nevada, as sureties, are held and firmly
bound unto the United States of America, in the
full and just sum of Four Thousand Dollars

(\$4,000.00), to which payment well and truly be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 16th day of November, in the year of our Lord, one thousand nine hundred and twenty-two.

WHEREAS, lately on the 16th day of August, A. D. 1922, at a term of the District Court of the United States for the District of Nevada, in a cause pending in said Court between the United States of America, plaintiff, and J. Bilboa and William Borda, defendants, a judgment and sentence was rendered against said defendants as follows, to wit:

That said J. Bilboa be imprisoned for not less than four months in the Washoe County jail, at Reno, Nevada, and in addition be fined in the sum of Two Hundred Fifty Dollars (\$250.00). [42]

That said witness Borda be imprisoned for not less than four months in the Washoe County jail, at Reno, Nevada.

WHEREAS, the said defendant, William Borda, obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the said United States District Court for the District of Nevada, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the said court 30 days from and after the date thereof, which citation has been fully served.

Now, the condition of said obligation is such, that if the said J. Bilboa and William Borda shall prosecute said writ of error to effect, and shall appear in person in the United States Circuit Court of Appeals for the Ninth Circuit, when said cause is reached for argument or when required by law or rule of said court, and from day to day thereafter in said court until such cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the said Court of Appeals, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence against him shall be affirmed, and if he shall appear for trial in the District Court of the United States for the District of Nevada, on such day or days as may be appointed for a retrial by the said District Court and abide by and obey all orders of said Court, provided the judgment and sentence against them shall be reversed by the United States Circuit Court of Appeals, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

J. BILBOA, [Seal]

Principal.

PETER IRIBARNE, [Seal]

Surety.

JOHN ELISONDOBERRY [Seal]

Surety. [43]

State of Nevada,

County of Washoe,—ss.

Peter Iribarne and John Elisondoberry, sureties

on the annexed foregoing undertaking, being first duly sworn, each for himself and not one for the other, deposes and says: That he is a resident and freeholder within the County of Douglas, as to Peter Iribarne, and Ormsby County as to John Elisonberry, State of Nevada; and that he is worth the sum of Four Thousand Dollars (\$4,000.00) over and above all his just debts and liabilities, in property not exempt from execution.

PETER IRIBARNE.

JOHN ELISONDOBERRY.

Subscribed and sworn to before me this 16th day of November, 1922.

[Seal]

E. O. PATTERSON.

Clerk U. S. District Court.

By O. E. Benham,
Deputy.

Approved as to form and sureties November 19, 1922.

GEORGE SPRINGMEYER,

U. S. Attorney.

E. S. FARRINGTON,

U. S. Dist. Judge.

[Endorsed]: 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Bail Bond on Writ of Error. Filed Nov. 17th, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys, Reno, Nevada. [44]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,

Defendants.

Bail Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, J. Bilboa, of the county of Douglas, State
of Nevada, as principal, and Peter Iribarne and
John Elisondoberry of the County of Douglas, State
of Nevada, as sureties, are held and firmly bound
unto the United States of America, in the full sum
of Four Thousand Dollars (\$4,000.00) to which pay-
ment well and truly be made we bind ourselves,
our heirs, executors and administrators, jointly and
severally by these presents.

Sealed with our seals and dated this 16th day
of November, in the year of our Lord, one thou-
sand nine hundred and twenty-two.

WHEREAS, lately on the 16th day of August,
A. D. 1922, at a term of the District Court of the
United States for the District of Nevada, in a
cause pending in said court between the United
States of America, plaintiff, and J. Bilboa and
William Borda, defendants, a judgment and sen-
tence was rendered against said defendants as fol-
lows, to wit:

That said J. Bilboa be imprisoned for not less than four months in the Washoe County Jail, at Reno, Nevada, and in addition be fined in the sum of Two Hundred Fifty Dollars (\$250). [45]

That said William Borda be imprisoned for not less than four months in the Washoe County jail, at Reno, Nevada.

WHEREAS, the said defendant, J. Bilboa, obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the said United States District Court for the District of Nevada, to reverse the judgment and sentence in the aforesaid suit and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the said court thirty days from and after the date thereof, which citation has been fully served.

Now, the condition of said obligation is such, that if the said J. Bilboa and William Borda shall prosecute said writ of error to effect, and shall appear in person in the United States Circuit Court of Appeals for the Ninth Circuit, when said cause is reached for argument or when required by law or rule of said court, and from day to day thereafter in said court until such cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the said Court of Appeals, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence against him shall be affirmed,

and if he shall appear for trial in the District Court of the United States for the District of Nevada, on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders of said Court, provided the judgment and sentence against them shall be reversed by the United States Circuit Court of Appeals, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

WILLIAM BORDA, (Seal)

Principal.

PETER IRIBARNE, (Seal)

Surety.

JOHN ELISONDOBERRY, (Seal)

Surety. [46]

State of Nevada,
County of Washoe,—ss.

Peter Iribarne and John Elisondoberry, sureties on the annexed foregoing undertaking, being first duly sworn, each for himself and not one for the other, deposes and says: That he is a resident and freeholder within the County of Douglas, as to Peter Iribarne, within Ormsby County as to John Elisondoberry, State of Nevada; and that he is worth the sum of Four Thousand Dollars (\$4,000.00) over and above all his just debts and liabilities, in property not exempt from execution.

PETER IRIBARNE.

JOHN ELISONDOBERRY.

Subscribed and sworn to before me, this 16th day of November, 1922.

[Seal]

E. O. PATTERSON,
Clerk U. S. District Court.

By O. E. Benham,
Deputy.

Approved as to form and sureties November 19, 1922.

GEORGE SPRINGMEYER,
United States Attorney.

E. S. FARRINGTON,
U. S. District Judge.

[Endorsed]: 5610. In the United States District Court, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Bail Bond on Writ of Error. Filed Nov. 17th, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys, Reno, Nevada. [47]

In the District Court of the United States, in and for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Order Extending Time to and Including December 4, 1922, to File Record and Docket Cause.

Good and sufficient cause appearing therefor and

on stipulation counsel for the respective parties herein,

IT IS ORDERED that the defendants herein be and they hereby are granted to and including the 4th day of December, 1922, within which to file the papers and record on appeal in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 20th day of November, 1922.

E. S. FARRINGTON,
Judge.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and Wm. Borda, Defendants. Order Extending Time. Filed Nov. 20, 1922. E. O. Patterson, Clerk. Huskey and Kuklinski, Attorneys at Law, Reno, Nevada.

(Above order entered Nov. 20, 1922, in Law Journal.) [48]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Bill of Exceptions on Behalf of Defendants.

BE IT REMEMBERED: That in the term of

April 1922, No. 5610, came the United States of America into the said court and impleaded the said defendants in a certain information of violation of the National Prohibition Act, said information containing three charges, to wit, violation of Section 3, title II, by sale and possession of intoxicating liquor and violation of Section 21 of the same Act for maintaining a common nuisance and the said defendants pleaded not guilty. And thereupon issue was joined between them.

And afterwards, to wit, at a session of said Court, held at Carson City, Nevada, before the Honorable E. S. Farrington, Judge of said Court on the 14th day of August, 1922, the aforesaid issues between the said parties came to be tried by a jury of said District of Nevada, for that purpose duly impaneled, at which day came as well the said complainant as the said defendants, by their respective attorneys, and the jurors of the jury aforesaid impaneled to try the said issue, being also called, came and were then and there in due manner chosen and sworn or affirmed, respectively to try the said issue, and upon the [49] trial, Mr. George Springmeyer, United States Attorney, appeared as attorney for the plaintiff and Mr. E. T. Patrick appeared as attorney for the defendants.

WHEREUPON the following proceedings were had and testimony introduced:

The information is read by the Clerk, and the defendants plead not guilty.

Mr. PATRICK.—Before we proceed with the trial, I wish to make a motion for separate trials.

In case number 5587, an indictment against Bilboa and Borda, a trial was had and William Borda was acquitted. That alleged possession, sale and a nuisance on February 26th, 1922. In this case, number 5610, an information charges an offense on or about March 20th, 1922, for possession, sale and nuisance. Your Honor will remember that in the first case Borda was acquitted; and you will also possibly remember in the trial of that case certain exhibits were put in by the Government, consisting, as I remember, of a half pint bottle of whiskey, and a small bottle of whiskey, which the witness Scott testified he had bought in the saloon, held in his mouth, and spit into the bottle; and they also introduced a bottle containing bitters, called Hufeland Bitters. I don't know whether it is the purpose of the District Attorney to introduce those same exhibits or not; but if he tells me it is his purpose to introduce the whiskey and the exhibits from the former case, and if they are introduced, they will be highly prejudicial to the defendant Borda, and tend to prove him guilty on a charge of which he has already been acquitted. I am informed, and believe it to be true, that only one raid was made by the prohibition officers on these premises, the French Hotel in Gardnerville, and at that time they seized a small half pint of whiskey, [50] which was introduced in evidence in the other case.

The COURT.—Is this the same offense that was charged in the other case?

Mr. PATRICK.—One offense was charged on

February 26th, and the other on March 20th. Your Honor will remember that the case opened with the testimony of Mr. Scott that he bought certain drinks in the French Hotel on February 26th; then to corroborate the testimony of Scott, the United States, as it has a perfect right to do, introduced the testimony of a similar offense which was committed on the 20th of March, in which they showed that the testimony of Scott must be true because on the 20th of March, on raiding the place, they found liquor similar to what he claimed to have purchased and used on that occasion.

It seems to me unfair that these men should be tried together, because some of the testimony to be introduced would not be admissible to Borda, he would not have the opportunity of his former acquittal; and for that reason I ask a separate trial for the defendants. I do not care in which order they are taken.

The COURT.—I think if that testimony appears I shall instruct the jury that they are not to consider that in relation to the charge against Mr. Borda, if it develops that it is the same case. The motion is denied.

Mr. PATRICK.—We desire to save an exception to your Honor's ruling.

The COURT.—You may have an exception.

(A jury is duly and regularly selected, impaneled and sworn to try the case, and is admonished by the Court, and at 4:10 P. M. an adjournment is taken until to-morrow, August 15th, 1922, at 10:00 o'clock A. M.) [51]

Tuesday, August 15th, 1922.

Court convened 10:00 o'clock A. M.

(All parties present. The Clerk calls the roll of jurors.)

The COURT.—(Addressing the jury.) Gentlemen, you have already been sworn to try this case, but if any of you have conscientious scruples against following the instructions of the Court as to the law in these cases, you must remember your oath and to what it binds you. If you have such conscientious scruples, and you didn't understand the matter before you took your oath, you ought to correct it, and indicate that fact just as soon as possible; and you have the opportunity to do it now if any of you feel that you cannot obey implicitly the instructions of the Court.

I will now permit the reading of the Information.

(The Clerk reads the Information. By request of counsel for the defendants, all witnesses for the plaintiff, with the exception of Professor S. C. Dinswore, are sworn, placed under the rule, and admonished by the Court.)

GOVERNMENT EVIDENCE.

Testimony of A. Carter, for the Government.

Mr. A. CARTER, called as a witness by plaintiff, having been previously sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Your name is A. Carter, is it not. A. Yes.

Q. You are now, and have been ever since the

(Testimony of A. Carter.)

first part of February of this year, a Federal Prohibition Agent for the State of Nevada, have you not? A. I have.

Q. You were such on or about the 20th of March of this year? A. Yes.

Q. Do you know the defendants, J. Bilboa, seated next to Mr. Patrick, and the man beside him, Mr. Borda? [52] A. Yes, sir.

Q. Do you know their place of business in Gardnerville, Douglas County, Nevada? A. Yes.

Q. What is the place of business called?

A. There are several places around there that we raided, I forget what particular place that is right now.

Q. Do you know whether it is the French Hotel.

A. Yes, the French Hotel.

Q. Where is that situated?

A. That is on the same side of the street as the North Fork Hotel, and all the rest of those.

Q. Is it on the Main Street?

A. On the Main Street in Gardnerville.

Q. At what time, day or night, were you on those premises? A. Somewhere around midnight.

Q. How did you enter the premises, and with whom?

A. I entered the premises with Mr. Brown and Mr. DuBois, through the front door.

Q. Did you look in before you entered?

A. Yes, I looked in the window.

Q. What, if anything, did you see?

(Testimony of A. Carter.)

A. I saw two men standing at the bar, about ready to take a drink.

Q. What sort of a drink, if you know?

A. We afterwards got the drink spilled out on the bar; one was wine and the other corn whiskey.

Mr. PATRICK.—I would like to have the answer read.

(The reporter reads the answer.)

Mr. PATRICK.—I ask that the answer be stricken out as a conclusion of the witness. [53]

The COURT.—Well, you may question him as to his qualifications to answer as to whether it was wine or not, if you wish. I suppose that is the point, that he is not qualified as an expert to tell whether it was wine or not.

Mr. SPRINGMEYER.—If you dispute that I will take up the time which I thought I would save.

Mr. PATRICK.—I dispute it, yes.

Mr. SPRINGMEYER.—(Q.) Do you know corn whiskey when you see it? A. Yes.

Q. Did you know it on the 20th of March?

A. Yes.

Q. Do you know it when you see it and smell it?

A. Yes.

Q. Did you know it on the 20th day of March this year? A. Yes.

Q. How long prior to that time had you known corn whiskey and wine?

A. Oh, I have known it for several years.

Q. Have you had any experience with those liquors? A. Yes, sir, on several occasions.

(Testimony of A. Carter.)

Q. Have you tasted them? A. Yes.

Q. Been present when analyses of them have been made? A. Yes.

Q. Can you say what sort of liquor was in these glasses? A. Red wine and corn whiskey.

Q. Did you see anybody back of the bar as you looked through the glass from the outside?

A. Yes, sir.

Mr. PATRICK.—The question is leading. I object to the form of the question.

Mr. SPRINGMEYER.—(Q.) Did you see any one back of the bar when you looked in from the outside? A. I did.

Mr. SPRINGMEYER.—Do you say that is leading, Mr. Patrick? [54]

The COURT.—I think I will allow that question; it is leading, of course, but it takes a great deal of time to ask him who he saw in there, and where they were. I shall refuse to sustain the objection, and counsel may have an exception.

Mr. PATRICK.—That is what I was going to ask for.

Mr. SPRINGMEYER.—(Q.) Let me ask you, what did you see, and who, and where as you looked through the glass from the street?

A. I saw the gentleman farthest over there (indicating).

Q. That is Mr. Borda? A. Yes, sir.

Q. Where did you see him?

A. Behind the bar, directly in front of these two men who were standing at the north side of the

(Testimony of A. Carter.)

bar. There was a piece of money on the bar, I can't tell what denomination; and these two glasses of liquor; they were about to take a drink. As we entered the door this man had just turned around with the money, I presume to ring it up in the cash register, I don't know what he did with it. Mr. Brown and myself made a quick trip, grabbed these glasses; we spilled the liquor all over the bar, and got the glasses; that is all.

Q. What sort of glasses were they, Mr. Carter?

A. One was a little wine glass, an ordinary wine glass, and the other was a whiskey glass, known as a whiskey glass.

Q. Would you recognize those glasses if you saw them? A. Yes.

Q. What, if anything, did you do with the glasses? A. We kept them as evidence.

Q. Will you please examine these glasses which I hand you, and state whether these glasses, or any one or two of them, are the glasses you refer to? [55]

A. I would say they were two glasses like those two there.

Q. Do you know whether this glass (indicating) was found there at that time or not?

A. I could not say; I know there was a glass like that, about that size.

Q. What did you do with those glasses?

A. We took those as evidence.

Mr. PATRICK.—I didn't understand the answer.

A. We took those as evidence.

(Testimony of A. Carter.)

Mr. SPRINGMEYER.—Will you please speak a little louder. I offer those two glasses in evidence, and ask that they be marked as Plaintiff's Exhibits 1 and 2. Any objection?

Mr. PATRICK.—Yes, we object. They have not been properly identified in any way, shape or form; he said they were similar glasses, but he does not say they are the same glasses. Object to the introduction of the glasses for that reason, want of identification.

Mr. SPRINGMEYER.—(Q.) What did you say you did with the glasses, Mr. Carter?

A. I said we retained them as evidence.

Q. Where did you take them?

A. Well, we put all the stuff on top of the bar there, and sealed the evidence, and put it in the machine; it was taken to Reno and put in the police station; we have a locker there; and afterwards we turned it over to Mr. Dinsmore.

Q. Inasmuch as there was no marking on the glasses, all you can say is that they were glasses similar to these?

A. Yes, sir, that might have been the glass there for all I know.

Mr. SPRINGMEYER.—I think under the circumstances that is sufficient, may it please the Court. [56]

Mr. PATRICK.—I think it is insufficient, may it please the Court.

By the COURT.—(Q.) When you put those glasses in the car into whose possession did they go?

(Testimony of A. Carter.)

A. Mr. DuBois, I think, took possession of them.

Q. We took the glasses from the bar?

A. Well, we left the bottles and glasses sitting on the bar.

Q. Some one took them off the bar and put them in the car, who did that? A. I don't know.

Q. You didn't? A. No.

Q. Did you ever see the glasses again?

A. No, sir.

Q. Before they came into court? A. No.

The COURT.—Well, they may be marked for identification, if you wish. (The bottles are marked Plaintiff's Exhibits 1 and 2 for identification.)

Mr. SPRINGMEYER.—(Q.) Did you find anything on the bar, or back of the bar, or near the bar? A. Yes.

Q. What?

A. I immediately took possession of the bar, as we had agreed to do, and the other boys went in the back room to search; and I found on the drain-board immediately behind the bar where these gentlemen had been standing, a wine bottle, brown bottle, about one quarter or a third full of wine, with the cork out, which I took possession of.

Q. Will you please examine this bottle, and state whether that is the bottle? (Hands to witness.)

A. No, I don't think that is the bottle.

Q. Will you excuse me a moment until I see Mr. Dinsmore, he has given me the wrong bottle. Mr. Carter, will you please examine [57] this carefully, examining the initials and the markings upon

(Testimony of A. Carter.)

it, and state whether or not you correct your answer.

A. I think there was more wine in the bottle when we got it; Mr. Dinsmore has taken some out for analysis; but the bottle that we got seemed to me like there was about that much wine (indicating).

Q. Whose initials are on the label?

A. Those are my initials.

Q. What does the label show as to what case it is?

A. That shows it is the case.

Q. What other initials are on there?

A. The boys that went in with me, Brown and DuBois; we all placed those on there.

Q. Was the label placed on there while all three were present? A. Yes.

Q. Will you say whether or not that is the bottle?

A. I will say that is the bottle.

Q. Will you say whether there was more or less liquor in there at that time?

A. There was about that much wine in it at that time (indicating on bottle).

Q. What was done with this bottle with reference to sealing it, or otherwise, at that time?

A. That is all that was done with it, was sealing it.

Q. Who sealed it, if you know?

A. Why, Mr. Nash used to carry a little sack of labels, and seals and so forth, and brought them in; they sealed it right on top of the bar, maybe, Mr.

(Testimony of A. Carter.)

DuBois did; Mr. DuBois took charge of the sample.

Q. Please state what was done, if anything, with reference to sealing this bottle on that occasion; was it sealed or not? [58]

A. It was placed on top of the bar, and Mr. DuBois and Mr. Nash took charge of it; that is all I know about it.

Q. Mr. Nash or Mr. Brown? A. Mr. DuBois.

Q. I thought you said, Mr. Carter, that Mr. Brown was with you on this raid?

A. He was; later on they came in.

Q. And who sealed the bottle, if you know?

A. I don't know.

Q. Was it sealed in your presence, or not?

A. No.

Mr. SPRINGMEYER.—I will ask that this be marked for identification.

(The bottle is marked Plaintiff's Exhibit No. 3 for identification.)

Q. Did you find any other liquor in those premises on that occasion? A. I did.

Q. What?

A. I found a small flask, about a half-pint flask, at the end of what is known as the back-bar; there were some rubbers there, and in this rubber was this pint flask; I noticed the neck of the bottle sticking out of the toe of this rubber, and I called Mr. Brown's attention to it as I took it out.

Mr. PATRICK.—Now, if the Court please, I desire the jury be instructed that any testimony in re-

(Testimony of A. Carter.)

gard to this bottle, so far as it relates to the defendant William Borda be excluded, for the reason that in case number 5587, which was an indictment, for a violation of the Volstead Act against these two defendants, Mr. Borda and Mr. Bilboa, this same bottle was introduced in evidence, and testified to as being found under the same circumstances by this witness; on that trial Mr. Borda was acquitted, and the same evidence cannot now be used against him in this case. [59]

The COURT.—You say that he was tried for having this bottle in his possession at that time?

Mr. PATRICK.—Yes, sir, he was.

The COURT.—Very well. Please produce the indictment in which he is charged with having this bottle in his possession at that time.

Mr. PATRICK.—That is case number 5587; it alleges the offense of possession.

The COURT.—I would rather see the indictment. (The indictment is produced.)

Mr. PATRICK.—I suggest that we proceed with the case, and that your Honor, after being fully advised in the premises, rule on my motion, and that can be done in the way of final instructions to the jury. I make that suggestion in order to save time and proceed with the case.

The COURT.—There is no objection made to the introduction of this bottle, if it is properly identified; but the bottle that was found in the rubber shoe you do object to?

(Testimony of A. Carter.)

Mr. PATRICK.—Yes, so far as Mr. Borda is concerned.

Mr. SPRINGMEYER.—(Q.) You stated, Mr. Carter, I believe, that you found a bottle in a rubber shoe? A. Yes.

Q. What sort of a bottle was it? A. A flask.

Q. Do you know what it contained?

A. It contained liquor.

Q. Could you identify that bottle if you saw it?

A. Yes.

Q. Please examine this bottle, and state whether that is the bottle or not. (Hands bottle to witness.)

A. Yes, sir, that is the identical bottle.

Q. About how much liquor was in it at the time?

A. About a third full, I would judge. [60]

Q. What was done with this bottle?

A. That bottle was sealed and turned over to Mr. Dinsmore.

Q. Was that sealed at the same time the bottle which is marked Exhibit No. 3 for identification was sealed?

A. I could not say; I didn't seal those bottles.

Q. You didn't seal this one either?

A. No, I placed them on top of the bar, and they were sealed by one of the other agents.

Mr. SPRINGMEYER.—I ask that this be marked for identification also.

(The bottle is marked Plaintiff's Exhibit No. 4 for identification.)

Q. Did you at any time during the course of that raid on that occasion see the defendant Mr. Bilboa?

(Testimony of A. Carter.)

A. Yes, sir.

Q. When and where did you see him?

A. I saw him after the raid had been made; we asked the bar-tender there—

Q. Is that Mr. Borda?

A. Yes, if he owned the place, and he did not, and we asked him who the owner was, and he said Mr. Bilboa there; and we asked him where he was, and he said he was up in the room asleep; Mr. Brown took Mr. Borda and I stayed in the bar-room with Mr. DuBois and a couple of other gentlemen in there; and we all stayed in there, and Mr. Brown went up and got this gentleman and brought him down, and he admitted he was the owner of the place.

Q. Did you hear him? A. Yes.

Q. What words did he use?

A. Mr. Brown says, "Are you the proprietor of this place?" and he says, "Yes, I am." "Well," he says, "you are under arrest then, I arrest the two of you"; and we asked him if they could get bail, [61] and this gentleman Bilboa went to the safe door to unlock the safe, and about that time, or previously, phoned to a man to come over and put up bail for him, and this gentleman came in.

Q. Were both of the defendants placed under arrest on that occasion? A. Yes.

Mr. SPRINGMEYER.—You may cross-examine.

Cross-examination.

Mr. PATRICK.—(Q.) When did this happen, Mr. Carter?

(Testimony of A. Carter.)

A. It happened somewhere around midnight, or thereafter.

Q. A year ago?

A. I don't think it was that long.

Q. Well, can you give me the day and the month, you haven't stated it yet that I know of.

A. It was in the morning, I believe, of the 20th.

Q. The 20th of what month? A. March.

Q. March 20th after midnight; you stated you looked through the door, was it a glass door; what sort of door was on that French Hotel?

A. It was a glass door.

Q. Plain glass? A. Well, I didn't—

Q. Or frosted?

A. I didn't notice the door particularly; I looked through the window.

Q. You what?

A. I looked through the window.

Q. Was there a window in the door? You looked through the window, you didn't look through the door? A. No, sir.

Q. What did you see?

A. I saw two men standing in front of the bar, and a gentleman standing behind the bar, and I saw two glasses on the bar, and a piece of money on the bar.

Q. Did you know these two men? [62]

A. And the men in the act of taking a drink?

Q. Did you know these two men? A. No, sir.

Q. Did you detain them as witnesses?

A. No, sir.

Q. Why not? A. I don't know.

(Testimony of A. Carter.)

Q. And you say there was a glass before each man, a small glass or a large glass? A. Yes, sir.

Q. Was there anything in them? A. Yes, sir.

Q. Had they drank from them? A. No, sir.

Q. The glasses were standing there on the bar filled? A. Yes, sir.

Q. And the parties had paid for the drink, and had not yet drank it?

A. I don't know whether they had paid for them or not; there was money there; I suppose they were paid for.

Q. Who entered with you?

A. Mr. Brown and Mr. DuBois.

Q. The three of you entered together; when you entered the glasses were standing on the bar filled?

A. Yes, sir.

Q. How did they become spilled?

A. Mr. Brown and myself made a grab for them.

Q. And who turned them over?

A. Well, they were turned over in the scuffle.

Q. Did Mr. Borda have anything to do with turning them over? A. No, sir.

Q. They were turned over through your impetuous grab for them, by you and Mr. Brown?

A. Yes, sir.

Q. What did you do to Mr. Borda after coming in there?

A. Mr. Borda got away around the end of the bar, and Mr. Brown grabbed him, and tore his shirt open.

Q. Did Mr. Borda try to destroy any evidence?

(Testimony of A. Carter.)

A. He didn't have any time. [63]

Mr. PATRICK.—I move that be stricken out.

The COURT.—That may go out.

Mr. PATRICK.—(Q.) Did Mr. Borda try to destroy any evidence? A. No, sir.

Q. Did he make any attempt to destroy any evidence? A. I didn't see any.

Q. How did you determine that this was red wine and corn whiskey?

A. By looking at it and smelling of it.

Q. How many times have you looked at red wine and corn whiskey? A. I don't know.

Q. You have been a man, I think you testified in the former case, that never was accustomed much to intoxicating liquors? A. Yes, sir.

Q. Didn't you testify to that before?

A. Yes, sir.

Q. How much experience have you had with intoxicating liquors? A. I don't know.

Q. How many times have you drank corn whiskey? A. I could not say.

Q. How many times have you smelled corn whiskey? A. I don't know that either.

Q. How many times have you drank red wine?

A. I could not say that either.

Q. How many times have you smelled red wine?

A. I don't know.

Q. As a matter of fact, you have been a person of good habits in regard to intoxicating liquor all your life, haven't you, Mr. Carter? A. Yes.

Q. And haven't had much experience with it even

(Testimony of A. Carter.)

before the Volstead Act went into effect, is that right?

A. Oh, I had quite a lot of experience with it in different ways. [64]

Q. You have what?

A. Yes, I have had some experience with it.

Q. But very little?

A. Well, I have seen quite a lot of it.

Q. I mean so far as you are personally concerned, you have not consumed much liquor of any kind?

A. No, sir.

Q. Even before the Volstead Act went into effect?

A. No, sir.

Q. That bottle that has been marked for identification, you stated positively it was not the bottle, I believe?

A. Well, I have been on so many raids at first I—

Q. Oh, you have been on a good many raids, have you, since the first of February, since you became a prohibition officer?

A. I would say I have.

Q. About how many?

A. Oh, probably a hundred or so.

Q. What caused you afterwards, Mr. Carter, to state that this was the bottle?

A. Well, we put our initials on there for identification, on these bottles, so when the time arrives we will know them.

Q. What are your initials? A. A. C.

Q. Where are they?

A. Right there. (Indicating on bottle.)

Q. Is that in your handwriting?

(Testimony of A. Carter.)

A. Yes, sir, right here. (Indicating.)

Q. Did you put a date on the bottle at the time?

A. No, sir, I put my initials.

Q. Any date on that bottle? A. Yes, sir.

Q. Where is the date?

A. Right there (indicating); it is marked March 19th, 1922.

Q. This was not on March 19th, was it?

A. This was around midnight, I say. [65]

Q. At the time you sealed this bottle it was March 20th, was it not, after midnight?

A. It was around midnight, that is all I know.

Mr. SPRINGMEYER.—He said it was the morning of the 20th, about midnight; I presume he didn't know whether it was before or after midnight.

Mr. PATRICK.—(Q.) Except for the date, Mr. Carter, you could not tell that bottle from hundreds of other bottles you have seized in other searches, could you?

A. The bottles are about the same.

Q. It was your custom anything you took as evidence to put your initials on? A. Yes, sir.

Q. This bottle was not sealed in your presence; you don't know who sealed it? A. No, sir.

Q. Now about this small flask, I wish you would tell the jury and explain to the jury where you found this flask; and you might illustrate by standing along here and showing where the bar was, considering the Judge's Bench the bar.

(Testimony of A. Carter.)

A. All right, sir. This here (indicating) would be the front bar; this is a back bar where they keep the bottles, and so forth, and right at the end of the back bar were overshoes.

Q. I think you will make it plainer if you come around here, Mr. Carter. A. All right.

Q. Because Mr. Borda was on the other side of the bar, wasn't he, when you went in?

A. Yes, sir.

Q. This was the front of the bar on this side; now where did you find this bottle?

A. This is the front of the front bar.

Q. Yes.

A. Mr. Borda was standing back of the bar.
[66]

Q. Back of the bar when you found the bottle?

A. No, I didn't say that.

Q. When you went in? A. Yes.

Q. Where was this bottle with reference to the front of the front bar?

A. Well, it was the back bar, behind the front bar.

Q. This is the front of the front bar, isn't it?

A. No.

Q. Come around here and get it straightened out. Stand up as though you were standing up in front of the bar.

A. (Standing as requested.) These customers were standing in front of the bar like this.

(Testimony of A. Carter.)

Q. And the back bar was over there where the clerk is? A. No.

Mr. SPRINGMEYER.—He says the customers were standing there.

A. I am standing in the position of the customers; and Mr. Borda was standing there (indicating), and the back bar is right along there.

Mr. PATRICK.—(Q.) You found this over about where the chair is?

A. This was at the end of the back bar; Mr. Borda would be about in this position, where he was standing, and the back bar runs along here, with the glasses, doors, and so forth, in where they have the bottles at the end here, where they come in and take off their rubbers and put them there; and there were several pair there, two or three pair I should say, and I noticed that bottle sticking in one of these rubbers.

Q. This was tucked into one of the rubbers so you could see it?

A. Yes, sir, there was the neck of the bottle sticking out pretty well. [67]

Q. At the time you entered there, were there more persons than these two customers?

A. Yes, sir, there was another man sitting down at the stove, and he was sitting about four or five feet away; there is a stove at the end of the bar.

Q. Did you make any inquiry of those people as to who owned those rubbers? A. No, sir.

Q. Was there a pair of rubbers there together?

(Testimony of A. Carter.)

A. Yes, sir.

Q. And more than one pair? A. Yes.

Q. Did you ask Mr. Borda if those were his rubbers, or Mr. Bilboa? A. No, sir.

Q. You made no inquiry at all about them?

A. No, sir.

Q. You had nothing to do with the sealing of this bottle either? A. No, sir.

Mr. PATRICK.—That is all.

(A short recess is taken at this time.)

Testimony of P. E. DuBois, for Plaintiff.

Mr. P. E. DUBOIS, called as a witness by plaintiff, having been previously sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Your name is P. E. DuBois? A. Yes, sir.

Q. And you are and have been during all of this year a Federal Prohibition Agent for the State of Nevada, have you not? A. I have.

Q. Were you present late during the night of March 19th, about twelve o'clock, or just before twelve and just after twelve o'clock, when Mr. Carter and Mr. Brown entered the French Hotel at Gardnerville, Nevada? A. I was.

Q. Before entering the hotel what was done by the three of you, or any one of you from the outside, if you know? [68]

A. Well, Mr. Carter, I believe it was, looked through the window before we went in; I guess

(Testimony of P. E. DuBois.)

probably both of them did; I didn't until we entered; I followed right in with them, but I didn't peek through before we entered, I followed right in with them.

Q. What did you do when you entered?

A. I ran right straight back along the bar, and there was a young fellow started to run to where there was an opening, a door opening, he turned to the left, and as he turned to the left I grabbed him, and he came back into the bar-room.

Q. Was that either one of these defendants?

A. Oh, no.

Q. It wasn't either one of these defendants?

A. It was a fellow called Doc, a young doctor, I guess.

Q. Did you see anything or anyone any place in the premises?

A. There was a couple of men standing at the bar, and there was two glasses on the bar; I just saw them as they ran in before I had got these parties, and I didn't stop at the bar at all going through.

Q. Did you see anything when you came back with this man you call Doc, on the bar?

A. I saw the glasses that the boys had.

Q. Did you see anything else?

Q. And a bottle; a bottle of wine, or a bottle of something; a bottle that had something in; that was a quart bottle and the boys had it then.

Q. Anything else?

(Testimony of P. E. DuBois.)

A. Some glasses, three glasses.

Q. Did you see any other bottles outside of the quart bottle?

A. Outside of the quart bottle?

Q. Other than the quart bottle? [69]

A. Not at that time, no.

Q. Did you later on? A. Yes, I did.

Q. Where did you see it?

A. I saw Mr. Carter have it in his hands; Mr. Carter turned and I heard him holler, and I looked around, and he had the bottle in his hand; he said he got it out of the overshoe; I didn't see him take it out of the overshoe, but he turned around from where there was a couple of pair of overshoes sitting in the corner.

Q. Do you know what was done with the glasses?

A. The glasses were taken as evidence.

Q. Who took them?

A. I think it was Mr. Carter or Mr. Brown that labeled them; I helped label them; I took charge of the evidence and labeled it after Mr. Nash had written the labels, and Mr. Brown and I sealed the bottles.

Q. Could you identify the glasses if you saw them? A. I think so.

Q. Would you please examine exhibits one and two for identification, and the broken glass I hand you, and state whether or not they are the glasses?

A. That looks like the broken glass.

(Testimony of P. E. DuBois.)

Q. For your information these marks were put on by the Clerk.

A. Well, there was a whiskey glass, that looks like the glass; there was also two wine glasses, one of them was broken.

Q. Well, were there glasses of that sort?

A. Yes.

Q. Do you know whether or not those are the glasses?

A. Yes, I would say that they are the glasses; they are identically the same, and there was a piece broken out of one of them.

Q. Were they kept with the other evidence?

A. Yes. [70]

Q. Who did you say had the other evidence?

A. I had it; I took the other evidence home with me.

Mr. SPRINGMEYER.—I ask this be marked for identification.

(The glass is marked Plaintiff's Exhibit No. 5 for identification.)

Mr. SPRINGMEYER.—That is the broken glass.

WITNESS.—And on the morning of the 21st I turned it over to Professor Dinsmore at the city jail in Reno.

Q. Were these out of your possession at any time? A. No.

Q. From the time you took them after they were sealed by you, as you state, to the time you delivered them to Professor Dinsmore?

(Testimony of P. E. DuBois.)

A. They were not.

Q. Who wrote out the labels on the bottles?

A. Mr. Nash wrote them out.

Q. Do you know whether or not the labels were initialed?

A. I am pretty positive; I usually initial the labels before I leave a place.

Q. Could you recognize your labeling?

A. Yes, sir.

Q. Would you please examine exhibit number 3 for identification and state whether that is one of the bottles?

A. It is; my initials are on there.

Q. And exhibit number 4 for identification?

A. Yes, sir.

Q. Are those the two bottles you sealed?

A. Yes, sir.

Q. Were the defendants or either of them present at the time?

A. I think both of them were present at that time.

Q. Did you hear any conversation between the defendants and Mr. Carter or Mr. Brown?

A. Well, I can't recall the conversation that took place after we got the evidence; I wasn't right at the bar and not right with them; I was near the stove talking to this doctor that I had had the chase with back through the room. [71]

Q. Which one of the defendants was there at the

(Testimony of P. E. DuBois.)

time you entered the room; you said one of them was there?

A. Well, I don't know; I don't know whether I could identify which one; I remember they were both in there afterwards; one was called down; the proprietor was called out of bed and brought downstairs; I rather think it is the larger of the two.

Q. Who was called down from upstairs?

A. No, that was in there.

Mr. SPRINGMEYER.—You may cross-examine.

Cross-examination.

Mr. PATRICK.—(Q.) Were these parties placed under arrest that night. A. Yes, sir.

Q. Did they give bond?

A. Well, I believe they did; I believe the sheriff came in there and there was a bond fixed for their appearance.

Q. At the French Hotel? A. Yes.

Q. Do you remember what sort of a bond it was?

A. No, I don't. Mr. Brown and Mr. Nash, I believe, was handling that; Mr. Brown got the case report on it, and he wrote the case up, Mr. Brown did, and I could not say just exactly what kind of a bond it was.

Q. Now who was this young fellow who started to run?

A. I can't recall his name, they called him Doc.

Q. Did you detain him as a witness?

A. I didn't understand you.

(Testimony of P. E. DuBois.)

Q. Did you keep him as a witness?

A. No, sir.

Q. Did you find out his name? A. No, sir.

Q. You say there were two other men standing before the bar when you went in?

A. Yes, sir.

Q. Did you find out who they were?

A. I did not; the doctor was one of them. [72]

Q. This man you call Doc?

A. The man they called Doc, yes.

Q. And of your own knowledge you don't know what was in these glasses?

A. Well, the glasses, when I came back I smelled the odor that was in them; one appeared to have wine in, and the other seemed to be whiskey, the small one from the odor of it; I came back, I suppose it was a few minutes, and the boys had the glasses in their hands at that time; Mr. Brown had the glasses.

Q. Did you put these labels on the glasses?

A. No, I didn't say that I labeled the glasses; the bottles.

Q. Who labeled these glasses, if you know?

A. I don't know.

Q. Are your initials on there, in any place?

A. No.

Q. Do you see your initials on that one?

A. No, sir.

Q. On this one? (Handing to witness.)

(Testimony of P. E. DuBois.)

A. No, sir; I looked at that one.

Q. So you don't know anything about these glasses?

A. I didn't label those at all.

Q. But you labeled the bottles? A. Yes, sir.

Q. You retained the evidence yourself?

A. Yes, sir, I took the evidence out of there; it was in my possession until I turned it over to Professor Dinsmore.

Q. What did you retain as evidence, and what did you turn over to Professor Dinsmore?

A. I turned those two bottles over to the Professor.

Q. That don't include the three glasses?

A. Well, I turned three glasses over, and they look to be the same glasses, the same three glasses; one had a piece out of it.

Q. You gave Professor Dinsmore these two bottles?

A. Yes, those two bottles, and three glasses.

Q. How do you know these are the same bottles you turned over to [73] Professor Dinsmore?

A. It is the label I put on, and I put my initials on there.

Q. What are your initials?

A. P. E. D. Right here (indicating).

Q. And you labeled them at the time?

A. Yes, sir, I put my initials on these as a rule, if they are put on at all they are put on immediately

(Testimony of P. E. DuBois.)

after they are labeled, while they are in my possession.

Q. You put them on this bottle?

A. I did; here they are (indicating on bottle).
There was more in that bottle than there is now.

Mr. PATRICK.—I move to have that stricken.

The COURT.—It may go out.

Mr. PATRICK.—(Q.) This occurred after midnight on the 20th; where did you keep these bottles, and what time did you turn them over to Professor Dinsmore?

A. On the morning of the 21st, about eleven o'clock.

Q. The 21st? A. Yes, sir.

Q. Wasn't the search made on the evening of the 19th?

A. It was made after midnight of the 19th, near midnight, probably three or four minutes after twelve when we entered there.

Q. You didn't depart from there on the 20th?

A. The 21st.

Q. No, on the 20th; aren't you wrong, Mr. DuBois; the date on this bottle is March 19th; does that mean after midnight of the 18th?

A. That was so near the 19th I suppose I put it the 19th; it was supposed to be just at midnight, or just before midnight, or the date would not have been on it; it was the 21st when I turned it over to Professor Dinsmore.

(Testimony of P. E. DuBois.)

Q. You held them in your possession over a day?
[74]

A. Yes, I did; they were sealed and labeled, and turned over to him sealed and labeled.

Q. I want to get this right; you entered there on March 19th, and left there on March 20th, is that right? A. Yes.

Q. And on March 21st you turned the bottles over to Professor Dinsmore? A. Yes.

Q. Why didn't you turn them over the same day?

A. I guess I was busy; there was considerable work on hand at that time; there is times that the Professor is out and we can't get hold of him.

Q. Who sealed those bottles?

A. Mr. Brown and myself.

Q. They were sealed in your presence?

A. Yes.

Q. Were the seals intact when you took them to Professor Dinsmore? A. They were.

Q. How did you seal them?

A. We used wax, and the U. S., and put the stamp on top.

Mr. PATRICK.—That is all.

Mr. SPRINGMEYER.—That is all.

Testimony of H. P. Brown, for Plaintiff.

Mr. H. P. BROWN, called as a witness by plaintiff, having been previously sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Your name is H. P. Brown? A. Yes, sir.

Q. You are now, and have been for several years.
a Federal Prohibition Agent for Nevada?

A. Yes, sir.

Q. Were you present on the occasion of a raid by prohibition agents upon the French Hotel at Gardnerville, Douglas County, Nevada, on the night of March 19th, or early in the morning of March the 20th, 1922. A. Yes, sir.

Q. About what o'clock was it? [75]

A. Well, it was around twelve o'clock somewhere, very close after twelve.

Q. Who were the prohibition officers engaged in the raid?

A. Mr. Carter, Mr. DuBois and myself.

Q. Before you went in did you or any of the three do anything?

A. Yes, sir, Mr. Carter and I looked through the window.

Q. What, if anything, did you see?

A. We saw two men standing at the bar drinking, and saw this gentleman behind the bar, Mr. Borda, and some money on the bar, a piece of silver.

Q. What were they drinking?

(Testimony of H. P. Brown.)

A. One was drinking wine, and the other one was drinking jackass brandy.

Mr. PATRICK.—(Q.) Did you know that at the time when you were looking through the window?

A. No, sir, we did not.

Mr. PATRICK.—I move the answer be stricken out.

The COURT.—It may go out.

Mr. SPRINGMEYER.—(Q.) Did you find later on what they were drinking? A. Yes.

Q. How did you discover what they were drinking? A. I took the wine out of their hand.

Q. What happened it when you took it out of their hand?

A. Spilled in the scuffle trying to catch Mr. Borda.

Q. Where did you spill it? A. On the bar.

Q. Do you know what the color of the liquid in the glasses was? A. Yes.

Q. What was the color?

A. The wine was a reddish color, and the liquor was a pale dark brown.

Q. How did it smell?

A. Alcoholic smell. [76]

Q. Were you at that time familiar with the smell of wine and the smell of whiskey? A. Yes, sir.

Q. What did you say was on the bar in the way of money?

A. I could not say whether it was a dollar or four bits; it was a piece of silver.

Q. When you went in what happened?

(Testimony of H. P. Brown.)

A. Why, I ran and took the glass of wine out of the fellow's hand, and Mr. Carter took the glass of liquor out of the other fellow's hand; and I made a grab at Mr. Borda so he could not destroy any evidence if there was any behind the bar.

Q. Go on.

A. Mr. Carter then went behind the bar, and I went back to the kitchen, where we found it once before; I thought that would be the place where they would have some stored; and Mr. Carter hollered to me, and I came out, and he pulled a half pint bottle of liquor out of a rubber; and then he went behind the bar, on the drain-board, and lifted up a quart bottle containing wine.

Q. Would you recognize the glasses and bottles if you saw them? A. I think I would.

Q. Do you know what was done with them?

A. Yes, sir.

Q. What?

A. They were sealed right there in the presence of these defendants, put in the car, and handed over to Mr. Dinsmore for analysis.

Q. The glasses also? A. Yes, sir.

Q. Who sealed the bottles?

A. Mr. DuBois and I.

Q. Do you know whether or not anybody put initials upon the bottles? A. Yes, sir.

Q. Who did?

A. Mr. Nash, Mr. DuBois and myself.

Q. Please examine these exhibits and state

(Testimony of H. P. Brown.)

whether they are the bottles and the glasses which were taken on that occasion? [77]

A. That was the bottle that was on the drain-board behind the bar; there was more wine in it than there is now, though.

Q. That is exhibit number 3 for identification.

A. And this is the half pint flask Mr. Carter pulled out of the rubber. (Indicating.)

Q. Exhibit 4 for identification.

A. I could not swear that those are the glasses; we didn't label them; they were glasses just similar to those; similar glass that I took out of this fellow's hand who was drinking. I say that glass there is similar; we didn't label them; it is a similar glass to the one I took out of the fellow's hand at the bar.

Q. How about these other two glasses?

A. This had water in (indicating), a chaser; and this one had brandy.

Q. Similar glasses to those? A. Yes.

Q. You said you did not label those glasses?

A. No, sir, put them in with the other evidence.

Q. And turned them over to Professor Dinsmore? A. Yes.

Q. Did you have any conversation, or was any conversation had, with either of these defendants in your presence on that occasion? A. Yes.

Q. Between whom and what was the conversation?

A. I asked Mr. Borda if he was the proprietor, and he told me he wasn't; I asked him who was, and he told me this gentleman here (indicating); I asked

(Testimony of H. P. Brown.)

him where the proprietor was, and he said "Up in his room," and I had Mr. Borda come up and show me where his room was, and he was in bed.

Q. Is that the gentleman seated on Mr. Patrick's right?

A. Yes. I asked him if he was the proprietor, and he told me that he was, and I told him he would have to put up bonds, and we waited around a few minutes, and I asked him the second time if he was going to put up bonds, and he went over to his safe. [78]

Q. You brought him down from his bedroom did you? A. I did.

Q. Did he open the safe?

A. About that time someone else came in, and went on his bond.

Mr. SPRINGMEYER.—You may cross-examine.

Cross-examination.

Mr. PATRICK.—(Q.) You were a witness in the case against these two defendants before, were you not? A. I was.

Q. At that time did you not state that the defendants were taken over to Minden, and gave bond there? A. They were.

Q. Did you give bond in Minden or in the French Hotel in Gardnerville?

A. I think we let it go right in the French Hotel; some fellow, I can't recall his name now, went on their bond.

Q. Mr. Brown, is that his name?

A. I really could not tell you what his name was.

(Testimony of H. P. Brown.)

Q. You took them to Minden, did you?

A. That I don't remember.

Q. Didn't you testify in the former case you did take them to Minden? A. I don't remember.

Q. As a matter of fact, the bonds were given there in the French Hotel in Gardnerville, as you remember now?

A. There was a fellow came in there, and was going to vouch for the appearance of those two gentlemen before the United States Commissioner; what his name is I do not know.

Q. At that hearing do you know what evidence was produced on behalf of the United States in the way of bottles, and things of that sort?

A. I remember there was some evidence produced at the time of the hearing. [79]

Mr. SPRINGMEYER.—Object on the ground it is not cross-examination; nothing of the kind was gone into on direct examination with reference to the preliminary hearing. I don't think it is necessary to take up the time on that.

Mr. PATRICK.—I am not asking about the preliminary hearing.

Q. You were a witness in this case about a month ago against these same defendants? A. Yes.

Q. Is this the bottle produced in evidence then?

The COURT.—Is that the question?

Mr. SPRINGMEYER.—I think you said at the preliminary hearing.

Mr. PATRICK.—No.

Mr. SPRINGMEYER.—He is not qualified

(Testimony of H. P. Brown.)

to answer; he doesn't know whether it was produced in evidence or not.

Mr. PATRICK.—Well, I ask if you know.

Mr. SPRINGMEYER.—I object as not proper cross-examination.

The COURT.—I don't think it is proper cross-examination.

Mr. PATRICK.—I withdraw the question, and will go ahead another way.

The COURT.—If you are going to use it to contradict something he stated at that time, that would be another matter; but I don't understand you intend to impeach him on that ground?

Mr. PATRICK.—No, I don't intend to contradict Mr. Brown on any point; I never found it necessary.

Q. Mr. Brown, was that bottle in your possession after you took possession of it; I mean the one with the red liquor in it? A. Yes, sir.

Q. Until it was turned over to Professor Dinsmore?

A. Not in my possession; Mr. DuBois took charge of it after we came from Minden.

Q. Who gave it to Mr. DuBois? [80]

A. Well, we all gave it to him; we were all in the party; he took charge of it.

Q. And after it was sealed in the presence of these defendants, you turned it over to Mr. DuBois?

A. In our car; we had the one car, and driving home we passed Mr. DuBois' house first on the way home to Reno, and we told him he had better take the evidence and keep it at his house all night.

(Testimony of H. P. Brown.)

Q. You don't know anything at all about it being turned over to Professor Dinsmore?

A. No, sir, I do not.

Q. The only thing you can say about these two glasses is that they are similar glasses to the glasses on the bar when you went in?

A. Exactly the same kind of glass, yes, sir.

Q. What about this broken glass; what do you know about that?

A. That is just a supposition that that was a chaser for the brandy.

Q. And that contained water at the time you went in? A. Yes, sir.

Q. There were three glasses, and two men standing before the bar? A. Yes, sir.

Q. And your supposition is that one contained water?

A. Well, we smelled it carefully; I smelled it carefully, and there was no odor of alcohol in it.

Q. Did you bring a sample of what you claim to be corn whiskey and wine into court?

A. No, sir, I spilled the wine when I grabbed it out of the man's hand; when I had the scuffle with Mr. Borda I spilled it.

Q. What became of the corn whiskey?

A. Mr. Carter was handling that.

Q. You didn't take a sample of either?

A. No, sir. [81]

Q. Now this was about twelve o'clock?

A. Very close to twelve o'clock.

Q. And Mr. Bilboa was in bed? A. Yes.

(Testimony of H. P. Brown.)

Q. Did Mr. Borda make any attempt to get away, or anything of the sort? A. No, sir.

Q. Did he make any attempt to destroy evidence?

A. No.

Q. You seized that for some reason?

A. Well, I played safe, so that he would not, and I grabbed hold of his shirt.

Q. Was that in front of the bar or behind the bar?

A. He was behind the bar, and I was on top of the bar.

Q. And you grabbed hold of his shirt so he would not have an opportunity to destroy any evidence?

A. Yes. Usually in a case when we enter that way, they usually run to destroy the evidence, and to prevent that I grabbed his shirt.

Q. He didn't make any resistance to you, did he?

A. None whatever.

Q. When you asked him if he was the proprietor, and he said he was not, he gave you the name of the proprietor? A. Yes.

Q. And you asked him to go upstairs with you?

A. Yes.

Q. Into Mr. Bilboa's room? A. Yes, sir.

Q. And in what condition did you find Mr. Bilboa?

A. He was in bed.

Q. Was he undressed? A. He was undressed.

Q. In bed and asleep?

A. I don't know whether he was asleep or not; he was in bed.

Q. What did you ask Bilboa up in the room?

(Testimony of H. P. Brown.)

A. When the three of us were together I asked him if he was the proprietor.

Q. What did he say? A. He told me he was.

Q. Did you ask him to come downstairs, or did he come down of his own volition?

A. I told him to come down, and he came on down; I came down ahead of him and he came down behind me; I told him to wait until he got dressed, and he waited and came down behind me.

Q. Now, outside of these two bottles what liquor did you find in the establishment?

A. We found some patent stuff there, I can't recall the name of it.

Q. Hufeland Bitters? A. Yes.

Q. That was the same that was introduced at the last trial here? A. Yes, sir.

Q. Did you find any other stuff beside the Hufeland Bitters?

Mr. SPRINGMEYER.—Object on the ground it is not proper cross-examination. They were not asked if they found any other liquor; they were only asked regarding these particular liquors.

The COURT.—Objection overruled. The question may come up later as to your right to contradict this testimony, or to explain it. I think you have a right to draw out all that occurred at that time as a part of the *res gestae*. Of course this is a peculiar case because you know exactly what the witness will testify to, and I assume you are drawing it out for some purpose.

(Testimony of H. P. Brown.)

Mr. PATRICK.—I will get at it in a different way, and withdraw my question.

Q. How thorough a search did you make of the premises, you and the rest of you?

A. Well, a pretty good search, I should judge.

Q. As thorough as possible? [83]

A. As I knew how; yes, sir.

Q. And after the search you told these people they were under arrest, and they arranged to give bond? A. Yes, sir.

Mr. PATRICK.—That is all.

Testimony of S. C. Dinsmore, for Plaintiff.

Mr. S. C. DINSMORE, called as a witness by plaintiff, after being sworn, testified as follows:

Direct Examination by Mr. SPRINGMEYER.

Q. Your name is S. C. Dinsmore, is it not?

A. Yes, sir.

Q. You have been for a number of years analytical chemist and pure food and drug inspector for the State of Nevada? A. Yes.

Q. You have also been engaged in making analyses of liquor samples for the prohibition force, have you not? A. Yes.

Q. Did you on or about the 20th or 21st day of March, of this year receive any liquor samples with markings on them, concerning one Bilboa and Borda? A. I did.

Q. Will you please examine exhibits for identification, one, two, three, four and five, and state whether those are the samples you received?

(Testimony of S. C. Dinsmore.)

A. Those are the ones.

Q. From whom did you receive them?

A. I received them from Mr. DuBois.

Q. What was the condition of the bottles?

A. They were sealed; each bottle had a certain amount of liquor in it; I took them into the laboratory, broke the seals, and made analyses.

Q. What was done with the glasses?

A. They were delivered at the same time the bottles were turned over to me. [84]

Q. In whose possession have these glasses and bottles been since that occasion?

A. They have been in my possession until the time they were turned over to the United States Marshal here.

Q. And does that include the glasses? A. Yes.

Q. What was the result of your analysis of exhibit 3 for identification, in the way of showing alcoholic content?

A. It was 16.52 per cent of alcohol.

Q. What would you say that was, Professor Dinsmore? A. I classed it as wine.

Q. Was it fit for use for beverage purposes?

A. I would say it was.

Q. What was the result of your analysis of Plaintiff's Exhibit Number Four for identification?

A. 42.12 per cent of alcohol.

Q. Did it contain any fusil oil?

A. A small amount.

Q. What is that called?

A. I classed that as corn whiskey.

(Testimony of S. C. Dinsmore.)

Q. Could you tell how old that is?

A. No, I could not positively.

Q. Do you know whether it was made since or before the National Prohibition Law went into effect?

A. I don't know, but from the nature of the analysis I would say it was made since the Prohibition Law went into effect.

Q. There was no such liquor as that made before that, was there? A. I never ran across any.

Q. That is not bonded liquor, is it? A. No.

Q. Is that fit for use for beverage purposes?

A. I would say it could be used for beverage purposes.

Mr. SPRINGMEYER.—I offer in evidence exhibits 1, 2, 3, 4 and 5, marked for identification; and ask that they be marked as exhibits in accordance with the identification marks. You may cross-examine. [85]

The COURT.—Have you any objection?

Mr. PATRICK.—I object to the introduction at the present time, until I am through with the cross-examination of this witness.

Cross-examination.

Mr. PATRICK.—(Q.) What do you mean by bonded goods?

A. Liquor that has been held in a Government warehouse for a period of years, and let out from the warehouse by Government authority.

Q. Held under bond. And you say this contained a small amount of fusil oil?

A. A small amount of fusil oil.

(Testimony of S. C. Dinsmore.)

Q. Whiskey that was made before the Prohibition Act went into effect had fusil oil, did it not, Professor? A. Yes.

Q. (The Court admonishes the jury and at 12:00 o'clock a recess is taken until 1:30 P. M.)

AFTER RECESS—1:30 P. M.

(All parties present. The Clerk calls the roll of jurors.)

Cross-examination of Mr. S. C. DINSMORE (Resumed).

Mr. PATRICK.—(Q.) Professor Dinsmore, you testified this morning with regard to two exhibits contained in bottles, the two bottles I hold in my hands; you testified as to their alcoholic content, that you made an examination of them. There seems to be only a remnant of liquid in this bottle; was that all that was in the bottle when you received it?

A. No.

Q. How much was there?

A. There was about a hundred cubic centimeters altogether; that would be about one-fourth full.

Q. About one-quarter full?

A. About one-quarter full. [86]

Q. How much liquid was in the other bottle when you received it?

A. There was 175 cubic centimeters; that was about a quarter full.

Q. About a quarter full?

A. About a quarter full.

Q. You measured the contents of each of them?

(Testimony of S. C. Dinsmore.)

A. No, just what I took out.

Q. You took about a hundred?

A. I took out about a hundred cubic centimeters.

Q. A centimeter is how much?

A. Well, in weight it is one gram, twenty-five grams to the ounce.

Q. You testified on the former trial of these defendants? A. Yes.

Q. Did you testify as to the contents of this bottle?

A. (Mr. SPRINGMEYER.) Objected to on the ground it is not cross-examination, and immaterial.

Mr. PATRICK.—I will wait until your Honor rules.

The COURT.—Very well. Are you introducing this for the purpose of contradicting previous testimony, or is it for the purpose of putting in your own evidence?

Mr. PATRICK.—Putting in my own evidence.

The COURT.—Then I will have to sustain the objection.

Mr. PATRICK.—Then I desire to make Professor Dinsmore my own witness.

Mr. SPRINGMEYER.—Have you finished your cross-examination?

Mr. PATRICK.—Not yet.

Mr. SPRINGMEYER.—I would like to have the offer ruled on.

The COURT.—I think you had better conclude your cross-examination, Mr. Patrick, then make him your own witness. I will not refuse to allow you to

(Testimony of S. C. Dinsmore.)

examine him as a witness in chief after you have finished the cross-examination; but it can't go in as part of the case in chief of the prosecution. [87]

Mr. PATRICK.—That is all.

Mr. SPRINGMEYER.—We would like to have a ruling on the offer of the bottles and glasses.

Mr. PATRICK.—We object to the introduction of them, because I expect to show at the present time that this bottle, the larger bottle, has been out of the possession of the Government for some time. Before I conclude my cross-examination I want to ask one more question.

Q. Professor Dinsmore, after taking what you said you took out of these bottles, did you seal them up again? A. Yes.

Q. Put your own seal on them? A. Yes.

Q. Show me which is your seal?

A. This paper seal is the seal that I put on this bottle here. This bottle here was resealed with red wax, and I broke that seal myself this morning.

Q. You didn't put a paper seal on that?

A. No, I did not.

Q. For what reason? Is it your habit always to put a red wax seal on everything?

A. Not always.

Q. What sort of red wax seal was it?

A. Just ordinary red wax, used for that purpose.

Q. Any impression made on the wax?

A. No, I didn't make any impression; that was there when I received the bottles.

Mr. PATRICK.—That is all.

(Testimony of S. C. Dinsmore.)

Mr. SPRINGMEYER.—(Q.) When I took the bottle out when Mr. Carter was on the stand, before he looked at his initials on the bottle, you took your knife and dug the seal, didn't you?

A. I broke the seal myself this morning.

Mr. SPRINGMEYER.—I now ask that the Court rule on the offer.

The COURT.—They will be admitted.

Mr. PATRICK.—I save an exception. [88]

(The exhibits marked for identification are admitted in evidence, and marked Plaintiff's Exhibits Nos. 1, 2, 3, 4 and 5.)

Mr. SPRINGMEYER.—That is all. The Government rests.

Mr. PATRICK.—Call Mr. Dinsmore as a witness.

DEFENDANTS' EVIDENCE.

Testimony of S. C. Dinsmore, for Defendants.

Mr. S. C. DINSMORE, called as a witness by defendants, testified as follows:

Mr. PATRICK.—(Q.) Professor Dinsmore, in the trial of the case, the former action against Bilboa and Borda, were you a witness for the Government?

A. I was.

Q. Did you testify at that time in regard to analyses of certain materials produced to you?

A. I did.

Q. Did you testify as to the contents of that bottle before you?

Mr. SPRINGMEYER.—Objected to as immaterial. This is a different offense charged, may it

(Testimony of S. C. Dinsmore.)

please the Court. The fact that it is against the same defendants does not make it incumbent on the Government to introduce the same evidence in both cases; they are at different dates, and it is immaterial.

The COURT.—I will allow the question.

A. No, I did not.

Mr. PATRICK.—That is all.

Mr. SPRINGMEYER.—(Q.) Did the United States Attorney or his assistant ask you for that bottle?

Mr. PATRICK.—If the Court please, I object to it as hearsay.

Mr. SPRINGMEYER.—It is not hearsay.

The COURT.—That is a question of fact.

Mr. PATRICK.—Self-serving evidence.

The COURT.—That is a question as to a fact, as to whether the bottle was called for or not.

Mr. PATRICK.—Very well, I withdraw the objection.

Mr. SPRINGMEYER.—(Q.) What is the fact?
[89]

A. What is the question?

Q. Did the United States Attorney or his assistant ask you for that bottle at the previous trial?

A. No.

Q. Did not call upon you for it at all?

A. No, sir.

Mr. SPRINGMEYER.—That is all.

Mr. PATRICK.—That is all. Mr. Bilboa, take

(Testimony of S. C. Dinsmore.)

the stand. We desire to have an interpreter for Mr. Bilboa, and also for Mr. Borda.

Mr. SPRINGMEYER.—I think Mr. Bilboa can get along very well. My recollection is the last time he got along better without an interpreter than he did with one. Ask the questions, and if he fails to answer properly, then have an interpreter. I am satisfied these defendants can get along without an interpreter.

The COURT.—If they have to have an interpreter, are you satisfied with the one we had before?

Mr. SPRINGMEYER.—Yes, may it please the Court.

The COURT.—Which one do you propose to examine first?

Mr. PATRICK.—Mr. Bilboa.

Testimony of J. Bilboa, in His Own Behalf.

J. BILBOA, one of the defendants, called as a witness in his own behalf, after being sworn, testified as follows:

The COURT.—Now you may question him if you wish, Mr. Springmeyer.

Mr. SPRINGMEYER.—(Q.) What is your name? A. J. Bilboa.

Q. How long have you lived in the United States?

A. Oh, about since 1907.

Q. What have you been doing since that time?

A. Working sheep.

Q. Anything else?

A. That is all, and farm sometimes.

(Testimony of J. Bilboa.)

Q. Did you ever run a hotel in Gardnerville?

A. I did. [90]

Mr. SPRINGMEYER.—May it please the Court, I think he gets along nicely.

WITNESS.—Well, I can't—well, if I get along all right, it is all right.

Q. You talk English to men in the hotel and on the sheep ranch all the time, don't you?

A. Sometimes.

Q. You go in the stores and buy things, don't you?

A. Yes.

Q. You have been doing that for years; you talk English when you go in stores, don't you?

A. Yes, I do.

Q. You don't have any trouble in making them understand what you want, do you?

A. Yes, I do.

Q. Well, you get what you want usually, don't you? A. Well, sure.

Q. You talk English every day, don't you, to somebody? A. Yes.

Q. You have been talking English every day to some one for a good many years, haven't you?

A. Yes, some.

Q. You have been in this country since 1907?

A. Yes.

Mr. SPRINGMEYER.—I submit, may it please the Court, that an interpreter is not necessary. I think, in all fairness, that a witness who understands the language as well as this witness, should be compelled to speak the language of the court.

(Testimony of J. Bilboa.)

The COURT.—Do you insist on an interpreter?

Mr. PATRICK.—I think we ought to have one.

The Court.—Well, you may have him for your examination; but I shall not restrict the District Attorney, if he wishes to examine the witness without an interpreter I shall allow him to do so.

E. ARANDA is sworn as interpreter, to interpret from English into Spanish, and from Spanish into English.

The COURT.—Do you want the oath administered to the witness by the interpreter, or are you satisfied that he understands [91] the oath?

Mr. PATRICK.—Did you understand the oath, when you raised your hand to swear? Ask him if he understood what the Clerk was saying to him when he raised his hand?

INTERPRETER.—He says yes.

Q. He knows he was sworn to tell the truth, the whole truth and nothing but the truth. A. Yes.

The COURT.—Ask him what he was sworn to testify to; ask him what the oath was? A. Yes.

Q. Ask him what it was, not yes, but ask him what it was that he was sworn to do. Can you put that question to him? A. Yes, I can.

Q. Well, just put the question to him.

A. He says to tell the truth, and nothing but the truth.

The COURT.—Go on.

Direct Examination by Mr. PATRICK.

Q. State your name; what is your name?

A. E. Aranda.

(Testimony of J. Bilboa.)

Q. You interpret the question to Mr. Bilboa.
What is your name? Ask him that.

A. J. Bilboa.

Q. Where do you live?

A. In Gardnerville now.

Q. How long have you lived in Gardnerville?

A. He lived in Gardnerville since 1909.

Q. How long have you lived in this country?

A. Since 1907.

Q. Has he been in the hotel business in Gardnerville?
A. He is in the hotel business now.

Q. How long? A. Since last summer.

Q. What hotel? A. French Hotel.

Q. What business does he conduct in that hotel?

A. He has got a saloon and a boarding-house.

[92]

Q. What sort of drinks does he sell in the saloon?

A. Soft drinks.

Q. Does he have rooms for rent in the hotel?

A. Yes, he has.

Q. How many rooms? A. Ten rooms.

Q. Was he in the hotel on the night of the 19th of March?
A. Yes, he was.

Q. Where? A. He was in bed.

Q. What time did he go to bed?

A. About eleven o'clock.

Q. Did anybody come to his room about twelve o'clock, or after twelve o'clock that night?

A. He says that was on the 19th of March, after twelve o'clock.

(Testimony of J. Bilboa.)

Q. Did anybody come to his room on the 19th of March, after twelve o'clock. A. Yes.

Q. Who?

A. A man by the name of Brown, and William Borda.

Q. What did Brown say to him?

A. Brown asked him if he was the proprietor, and he answers he is.

Q. He answered he was? A. He was.

Q. What did he do then?

A. He didn't do nothing; but Brown tell him that he was under arrest, he told him to come down from his room.

A. He made him put up the bond.

Q. No, did he come downstairs?

A. He come down after he was called by Brown.

Q. When he got downstairs did he see Brown and DuBois there? A. He saw him, yes.

Q. What were they doing?

A. He said one had some kind of a beverage, Hufeland, or some kind of name like that, and the other had some glasses—bitter.

Q. Ask him if any of them had either of these bottles? Who had that small bottle? [93]

The COURT.—Did he answer that question?

A. He didn't know nothing about it.

The COURT.—Do you hear the witness?

Mr. PATRICK.—Do you hear what he says?

The COURT.—When I ask you a question, Mr. Interpreter, you are to answer it; you are not to look around to anybody else to see whether it is

(Testimony of J. Bilboa.)

proper to answer my question or not. Now I asked you if you heard this witness? A. Yes.

Q. Answer it then.

A. Will you repeat the question?

Q. I asked you whether you were able to hear the witness or not. That is a very simple question, and if you are an interpreter you ought to be able to understand it and answer it. A. Yes.

Q. Why didn't you answer it in the first place?

A. He started to speak before I could give you an answer.

The COURT.—Go on.

Mr. PATRICK.—(Q.) Ask him if he saw either of those two bottles, or both of them, that night when he came downstairs? What did he say?

A. He says he don't know; they told him that they found a small bottle in the rubber shoe.

Q. He didn't understand the question. Ask him when he came downstairs if he saw either of those bottles in the possession of the officers or anybody else? What did he say?

A. He says he don't know nothing about that. He don't get the question right.

Q. Well, we will take one bottle away, and maybe he will understand. When you came downstairs did you see this bottle? A. No.

Q. Did the officers never show you this bottle?

A. He don't know. [94]

Q. Did you ever own that bottle?

A. He don't know.

Q. Were there any overshoes?

(Testimony of J. Bilboa.)

The COURT.—What was the answer to that question? A. He don't know.

Mr. PATRICK.—(Q.) Were there any overshoes at the end of the back-bar that night or that morning when he came downstairs?

A. He said there were several pairs of rubber shoes.

Q. Several pairs of overshoes?

A. Of overshoes.

Q. Does he know how that bottle got into an overshoe? A. He don't know.

Q. Did he ever put it there himself? A. No.

Q. Did he ever see that bottle on the morning of the 20th of March? A. He says no.

Q. Did the officers seal these bottles in his presence? A. He didn't see it.

Q. Did you ever have any whiskey in your premises, corn whiskey? A. He says no.

Q. Ask him how long his establishment is open, from what time in the morning until what time at night?

A. He is generally open at six o'clock, and close close to one o'clock.

Q. The doors are open all that time?

A. Repeat the question.

Q. Doors open all that time?

A. He says when he went to bed at eleven o'clock the doors were yet open.

Q. I mean as a rule were the doors open from six in the morning until he closed at night, as a general rule; ask him? A. He says yes.

(Testimony of J. Bilboa.)

Q. People were free to come in there?

A. Repeat your question. [95]

Q. People are free to come and go as they please in there? What does he say?

A. He says lots of people go in and out; that is what he say.

Q. And that has been the custom ever since he opened the place? What did he say?

A. He said yes, they come in for drinks, they come into the dining-room, and somebody else ask him for a room.

Q. Ask him if he knows what a public place is?

A. He don't understand that question.

Q. That is what I have been trying to get at. Ask him if he owned that bottle? A. He says no.

Q. Ask him if he ever sold any alcoholic drinks in that place since he opened it? A. He says no.

Q. Did he ever buy any alcoholic drinks for sale in there?

A. He says he bought a case of Hufeland in Carson at one time.

Q. That is the only thing.

A. That is the only thing.

Q. Ask him who waits on customers?

A. He says he has got a bartender to serve the customers, and he serves customers.

Q. Do you know whose overshoe it was that this bottle was found in? A. He don't know.

Q. Did he ever place any bottle in an overshoe?

A. He says no.

Mr. PATRICK.—That is all.

(Testimony of J. Bilboa.)

Cross-examination.

Mr. SPRINGMEYER.—(Q.) Do you know Brown, prohibition officer?

WITNESS.—(A.) I hear him call me when I was in bed.

Q. He called you when you were in bed??

A. Yes.

Q. He went up to your bedroom with Mr. Borda here, didn't he? A. Yes.

Q. The two of them went up there together?

A. Yes. [96]

Q. Did you tell Mr. Brown that you were the proprietor? A. Yes, I told him that.

Q. Did you tell him that Borda was your bar-keeper?

A. I no told him like that; he don't ask me that question.

Q. Borda was your barkeeper, was he not?

A. He working there.

Q. How long had he been working there?

A. Since last fall.

Q. Did you go downstairs with Mr. Brown?

A. Yes, after he come downstairs; he tell me to get up, as soon as I can I went down.

Q. Did you see Mr. Brown downstairs?

A. Yes, I see him.

Q. And Mr. Carter? A. I see him.

Q. Three men?

A. Three men, and lots of fellows come besides.

Q. Did Mr. Brown tell you they found this bottle in the rubber?

(Testimony of J. Bilboa.)

A. He tell me he find it, but I don't know.

Q. You saw this bottle there that time, did you not? A. I don't know.

Q. Well, it was like this bottle, was it not?

A. No.

Q. He told you they found a bottle like this?

A. Told me they found the liquor when I was in bed, that is all.

Q. Did he tell you they found this bottle there, too? A. He don't tell me.

Q. Did you see this bottle on the bar?

A. No, I don't know.

Q. Did you see any bottle on the bar?

A. I can't say.

Q. Did you see anything on the bar? A. No.

Q. You did not see anything on the bar?

A. No, sir.

Q. Did Mr. Brown tell you you were arrested?

A. He arrest me.

Q. Did he tell you what for?

A. He says I was coming upstairs find liquor, I was arrest. [97]

Q. He told you he found liquor?

A. That is what he tell me.

Q. Did he show you the bottle?

A. He didn't say nothing.

Q. Did he show you any glasses?

A. Didn't show me.

Q. Didn't show you anything, but he did tell you they found that whiskey in a rubber overshoe, is that right? A. Yes.

(Testimony of J. Bilboa.)

Q. Didn't he tell you anything about wine?

A. No.

Q. Did he tell you anything about whiskey glasses like this (indicating)?

A. I don't know about them.

Q. You see these glasses? A. Yes.

Q. Did you have glasses like this?

A. That is the kind of glasses, I don't know.

Q. That is the kind of glasses you had in your bar-room at this time. A. Lots of kind of glasses.

Q. Like this? A. I don't know like that.

Q. Was Mr. Borda working for you on that night? A. Yes, sir.

Q. Did you leave him downstairs when you went to bed? A. Yes, sir.

Mr. SPRINGMEYER.—That is all.

Mr. PATRICK.—That is all.

Testimony of William Borda, in His Own Behalf.

WILLIAM BORDA, one of the defendants, called as a witness in his own behalf, sworn through the Interpreter, FRED URDABURN, who has been previously sworn as interpreter, testified as follows:

Direct Examination by Mr. PATRICK.

Q. What is your name? A. William Borda.

Q. Where do you live? A. Gardnerville.

Q. For whom do you work?

A. Well, I stop French Hotel.

Q. Who runs the French Hotel? A. Bilboa.

[98]

Q. What is his regular occupation at the French

(Testimony of William Borda.)

Hotel? A. His wife is working there.

Q. What does he do for Bilboa? A. Cooking.

Q. Does he ever work in the soft drink establishment? A. Yes, he sell soft drinks.

Q. Was he there on the 19th of March?

A. Yes.

Q. What was he doing on that night?

A. Just helping him; he was helping.

Q. Where was Bilboa?

A. He says he was going to bed himself, Bilboa; and he was helping there.

Q. He was just going to bed himself at that time?

A. Yes.

Q. Were there any people in that establishment at that time? About twelve o'clock that night?

A. Yes.

Q. What were they doing?

A. Some talking and some drinking.

Q. Did he wait on two men that night, just before the officers entered? A. Yes.

Q. How many people did he wait on when the officers entered? A. Two.

Q. What did he serve them?

A. One O. T., and the other one grape juice.

Q. Did they pay for the drinks? A. Yes.

A. Was there a man called Doc in that saloon at the time? A. Yes.

Q. Was he one of the two that was being served with drinks? A. Yes.

Q. Where were the drinks when the officers entered? A. End of the bar.

(Testimony of William Borda.)

Q. On the bar? A. End of the bar.

Q. What did the officers do?

A. He says they got in and Mr. Brown jump over the bar, and tear his shirt to pieces. [99]

Q. What else did they do?

A. They were just looking around; he don't know, he never go from the saloon.

Q. Ask him when he first saw that small bottle there? A. He says no.

Q. Ask him when he first saw it, if he saw it that night? A. He says no.

Q. Didn't you see Mr. Carter find that bottle?

A. No.

Q. Did he place that bottle in the overshoe?

A. No.

Q. Did he know that bottle was in the overshoe?

A. No.

Q. Ask him if they had large bottles like that, or bottles like that large bottle in the establishment?

A. He says they got several bottles, several empty bottles, but he don't know this bottle.

Q. Ask him if he ever sold any alcoholic liquor in that place? A. No.

Q. Has he ever furnished any alcoholic liquor for sale? A. No, he never did.

Q. Did he see the officers take this large bottle?

A. No.

Q. Ask him what sort of glass he served the O. T. in? A. That size of a glass (indicating).

(Testimony of William Borda.)

Q. What sort of a glass did he serve the grape juice in? A. That kind of a glass (indicating).

Q. What did the officers say to you when they came in? A. What he was doing there.

Q. What did he tell them?

A. He was just servant.

Q. Did they ask for the proprietor? A. What?

Q. Did they ask for the owner? A. Yes.

Q. What did he tell them?

A. He says the boss, he was in bed.

Q. What did he do then?

A. He went up to the room himself. [100]

Q. And what else?

A. He went with Mr. Brown.

Q. What did he do then? A. He get Bilboa.

Q. And Bilboa and Brown come downstairs?

A. Yes.

Q. Did the officers make any arrests? A. Yes.

Q. Did they give bond? A. He give bond.

Mr. PATRICK.—That is all.

Cross-examination.

Mr. SPRINGMEYER.—(Q.) Do you know Brown? Wait a moment, I will talk to him. Did you know Brown?

WITNESS.—I can't understand.

Q. You talked English that night, didn't you?

A. No.

Q. Did Brown ask you where the owner was?

A. Can't understand.

Q. You can't understand now? Do you know Doc; do you know a man named Doc?

(Testimony of William Borda.)

A. Can't understand.

Q. Did you have an interpreter in this French Hotel that night? A. I don't understand you.

Q. Will you ask him if he had an interpreter in the French Hotel that night?

INTERPRETER.—No.

Q. Ask him if he told Mr. Brown where the proprietor was? A. Yes.

Q. Ask him if he told that to Mr. Brown in English?

A. He says he went up himself in the room, and show it to him, he can't understand.

Q. Ask him if he knows a man named Doc, who was in the place? A. Yes.

Q. Did Doc run away? A. No.

Q. What did Doc do? A. He was drinking.

Q. When Mr. Brown and the other officers came in what did Doc do? A. Nothing. [101]

Q. Did one of the officers run after Doc?

A. No.

Q. Did you see these glasses on the bar that night?

A. He says he don't know if them glasses, he says same kind of glasses.

Q. Did you see this bottle on the bar that night after the officers came in; that is marked Exhibit No. 3? A. No.

Q. Did you see this little bottle, exhibit No. 4, after the officers found it? A. No.

Q. Did you see them there at any time?

A. No.

(Testimony of William Borda.)

Q. Did you see these there on the bar at any time? A. No.

Q. Ask him if he worked for Mr. Bilboa on this night when the officers came in? A. Yes.

Mr. SPRINGMEYER.—That is all.

Mr. PATRICK.—That is all. I will call Mr. Patterson.

Testimony of E. O. Patterson, for Defendants.

Mr. E. O. PATTERSON, called as a witness by defendants, after being sworn, testified as follows:

Direct Examination by Mr. PATRICK.

Q. Your name is E. O. Patterson, and you are the Clerk of this Court? A. Yes, sir.

Q. As such Clerk did you have charge of the exhibits in a former suit? A. I did.

Q. Against these same parties? A. Yes, sir.

Q. I will ask you to examine this exhibit, and state whether that has been in your possession as Clerk since the former suit? (Hands to witness).

A. Yes, sir, ever since the former suit.

Q. I ask you to examine this exhibit, and ask if that has been in your possession since the former suit (hands to witness)? A. Never till to-day.

Mr. PATRICK.—That is all. [102]

Mr. SPRINGMEYER.—(Q.) Let me ask you if these glasses were in your custody as Clerk in the proceeding against these same defendants by the United States? A. No, sir.

Mr. SPRINGMEYER.—That is all.

Mr. PATRICK.—Defendants rest.

Mr. SPRINGMEYER.—We have no further evidence, may it please the Court.

The COURT.—Do you withdraw the motion heretofore made?

Mr. PATRICK.—No.

The COURT.—If you wish to insist on the motion, I will listen to you. The argument can be made in the presence of the jury or in their absence.

Mr. PATRICK.—Whatever is agreeable to the District Attorney.

Mr. SPRINGMEYER.—It is perfectly agreeable to me to let the jury hear everything we have to say.

Mr. PATRICK.—The effect of the motion was to exclude from the jury the small bottle introduced in evidence, on the ground that was introduced in evidence in another suit by the United States against these same parties, which was tried in June, upon an indictment, this present suit being on information; and at the conclusion of that trial the defendant Borda was acquitted. I therefore insist that the small bottle should not be admitted against the defendant Borda.

(Argument.)

The COURT.—As a matter of precaution, I shall exclude that particular bottle, as you ask; and the jury will be instructed as against the defendant Borda not to consider the testimony as to the small bottle or flask. That is the full extent of your motion, I think.

Mr. PATRICK.—Yes.

The COURT.—Proceed with the argument.
[103]

Charge of Court to Jury.

At the conclusion of the argument, the Court instructed the jury as follows:

The COURT.—I suppose it is useless, gentlemen, for me to say that you are bound to accept the law as it is given to you by the Court. This is a substantial and well-established rule of law; it is not because the judges want to assume any special authority; the law is fixed, and the purpose in the statutes, and in the procedure which prescribes this rule, is that the jury shall pass on the facts alone. You understood when you were examined before you were sworn, that you would follow the instructions of the Court, and it is your duty to do so. I may be mistaken in my interpretation of the law, and in my statement of what the law is, but that is no concern of yours. If I make a mistake, it is my mistake, and a mistake for which you are not responsible; it is a mistake which can be corrected in a higher court.

It will not do for any juror under his oath and in the performance of his duty to say I will not convict a man because he has a little liquor in his possession. When you say that you set yourself not only above the court, but above the law, and in violent antithesis to your oath. The law leaves it to you, however, to find out what the facts are; and the law is just as explicit and emphatic in saying that you are the ultimate judges as to what is proven by the facts as it is in saying that the judge

is to determine what the law is. I may tell you what I think is proven by this evidence; I may tell you what I think the evidence is, and I may give you my opinion of it; but if you follow that opinion against your judgment, again you are violating your oath. You can follow my opinion, and I have a right under the law to give my opinion if I desire, and think it proper and [104] expedient; but it has and can have no weight with you except as it appeals to your judgment, and to your conscientious judgment, in determining and weighing this testimony. It is for you to consider the evidence, and the manner of the witnesses on the stand; what they say is not only before you, but the manner in which they say it; and their motives, if any motives are disclosed. You cannot, however, go beyond the testimony which has been introduced here for your facts, any more than you can go beyond the instructions of the Court for the law.

There are three charges in this Information. The first is that the defendants together on the 20th day of March, 1922, at Gardnerville, had in their possession intoxicating liquors; the second is that the defendants on the same day sold intoxicating liquor; and the third is that on the same day and at the same place, these defendants maintained a nuisance; all of which is prohibited by the statute.

The statute as to the possession of intoxicating liquor is section 3, title II of the National Prohibition Act. That section in so far as it is pertinent, reads:

“No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act.”

No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, sell or possess any intoxicating liquor, except as authorized by this Act.

There is absolutely nothing in the Act which authorizes the possession of intoxicating liquor in a soft-drink parlor. [105] Whenever there is intoxicating liquor in a soft-drink parlor, there is a violation of the law. The Act is very broad in this, that it does not specify the amount of intoxicating liquor; it says the possession of any intoxicating liquor. There is nothing in the law which says that in order to violate this statute a man must have ten quarts, thirty quarts, or half a pint, or even one drink; it simply prohibits all.

Intoxicating liquor is defined in the statute. The definition is precise and admits of very little construction; it is easily applied and easily understood:

“When used in Title II and Title III of this Act, the word ‘liquor’ or the phrase ‘intoxicating liquor’ shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever

name called, containing one-half of one per centum or more of alcohol by volume which are fit for use for beverage purposes.”

The language is plain; any liquor, even if you call it water or call it milk, if it contains one-half of one per centum or more of alcohol by volume, and is fit for use as a beverage, comes within the inhibition of this statute. You are not to be confused by the use of the term “fit” for use for beverage purposes. A beverage is something one drinks for the pleasure of drinking.

The statute I have read covers the first count of the Information, which charges the possession of intoxicating liquor; and it also covers the second count, which charges the selling of intoxicating liquor on the 20th day of March of the present year.

The third count charges the maintenance of a nuisance common nuisance; and that is defined in section 21 of the same Act, which I will also read:
[106]

“Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor.”

The maintenance of any place, house, room, boat, or structure where intoxicating liquor is kept for

sale in violation of the Prohibition Act, is a nuisance, and an offense.

Keeping for sale is something more than having intoxicating liquor in one's possession. It means keeping it for sale as a business. It is not necessary that the proof should show more than one sale, or show a dozen sales; it is simply necessary that under all the facts in evidence you are convinced that the place is a place where intoxicating liquor is kept for sale as a business.

The evidence in this case I think shows some things quite conclusively, but this is a matter for the jury to determine. The story told by the witnesses for the Government is largely contradicted and disputed by the witnesses for the defendants. The Government witnesses have testified—two of them—that they looked through the window into the soft-drink parlor, or the bar-room where this transaction is alleged to have occurred. They saw two men standing in front of the bar, on which there were three glasses, and in two of the glasses the witnesses state there was liquor. The witness Brown jumped on top of the bar after seizing these glasses, and in the struggle the liquid was spilled. His testimony and the testimony of Mr. Carter, and I think the testimony of Mr. DuBois also, is that the liquid [107] spilled by odor was wine and corn whiskey; they so pronounced it. They also testify that there was a bottle on the drain-board behind the bar, containing wine. There is testimony also to the bottle which was found in a rubber shoe; defendants deny any knowledge of that bottle.

The bottle found in the rubber is taken from your consideration. So far as Mr. Borda is concerned you are not to consider it in relation to the charge against him; it may be considered as against the other defendant Mr. Bilboa. It is evident from this that there was intoxicating liquor in the premises; if the testimony of the Government witnesses is true, a crime was committed by some one. The question then arises who committed the crime; and that is the question for you to determine from all the evidence in the case.

The possession must be conscious. No man can be convicted of having intoxicating liquor in his possession if he knows nothing about it, and was not conscious of its possession. In other words, if I slip a keg of beer or a barrel of whiskey into your house, you have not violated this law; true, you are in possession of the whiskey because it is in your house, but you are not guilty because it was not a conscious possession; you did not know it was there, and there was no intention on your part to have possession of the whiskey. But in determining whether these defendants were conscious of the possession of the liquor, you are to consider all the circumstances in the case, the testimony of the Government witnesses, and the testimony of the defendants that they knew nothing about it. That, I understand, is about the extent of their testimony, that they knew nothing of these bottles and never saw them; that they never sold any whiskey, and never had any in their premises.

In determining whether there was a nuisance

maintained, you will also consider all the circumstances; the bar-room, what you find occurred when the officers went in, whether the things were there which they saw, and the conduct [108] and actions of the various parties. As to the sale, a sale was completed if the man behind the bar gave to these men the whiskey or the wine, and they received it; the moment it was delivered to them and the money was on the bar therefore, the sale was completed, whether they drank the whiskey or wine, or not. Whether anything of that kind occurred is for you to determine after a comparison and consideration of all the evidence, *pro* and *con*, on that subject.

In determining the issues presented, you are to remember that the defendants are presumed, and each of them is presumed to be innocent until his guilt is proven beyond a reasonable doubt. This means just as has been explained by counsel, that the evidence in favor of the Government must not only weigh as much as the evidence to the contrary, but it must weigh more; and it must not only weigh more, but it must weigh enough to eliminate what is called a reasonable doubt. A reasonable doubt is best defined by the term itself; a reasonable doubt does not mean every doubt, but it means such a doubt as would control you in the more weighty affairs of life. If after a careful consideration of all this testimony you are satisfied to a moral certainty that the defendants or either of them is guilty, you are bound to so find. You are to remember that the presumption of innocence follows

the defendants throughout the entire consideration of this case, and throughout your deliberations. You can find them both guilty on all the counts; you can find one guilty and the other not guilty; you can find one guilty on one count and not guilty on another, just as the evidence appeals to and convinces your judgment. Is there anything further, gentlemen?

Mr. PATRICK.—No exceptions, your Honor.

Mr. SPRINGMEYER.—Nothing further, may it please the Court.

The jury retires at 3:55 P. M. to consider their verdict and at 7:35 P. M. returned into court with the following verdicts: [109]

“In the District Court of the United States for the
District of Nevada.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

We, the jury in the above-entitled case, find the defendant, Wm. Borda, not guilty as charged in the first count of the information, guilty as charged in the second count; and not guilty as charged in the third count.

Dated this 15th day of August, 1922.

GEO. W. WILSON,

Foreman.”

“In the District Court of the United States for the
District of Nevada.

No. 5610.

THE UNITED STATES

vs.

J. BILBOA and WM. BORDA.

We, the jury in the above-entitled case, find the defendant J. Bilboa, guilty as charged in the first count of the Information; guilty as charged in the second count; and not guilty as charged in the third count.

Dated this 15th day of August, 1922.

GEO. W. WILSON,

Foreman.”

I, A. F. Torreyson, Reporter in the United States District Court for the District of Nevada, DO
HEREBY CERTIFY:

That as such reporter I took verbatim shorthand notes of the testimony and proceedings in said court on the trial of the case of United States of America, Plaintiff, vs. J. Bilboa and Wm. Borda, Defendants, on August 14th and 15th, 1922, and that the foregoing transcript, consisting of pages 1 to 69, both inclusive, contains a full, true and correct transcription of my [110] shorthand notes of the testimony given and proceedings had on said trial.

Dated Carson City, Nevada, September, 20th, 1922.

A. F. TORREYSON.

BE IT FURTHER KNOWN, that thereupon said defendants were sentenced and judgment was passed and rendered in accordance with the afore-said verdict of the jury, and that thereupon said defendants and each of them, made a motion for a new trial and for a vacation of the judgment, which motion was overruled and denied, said defendants severally excepted to the order of the Court overruling and denying said motion, and the defendants' exceptions were duly allowed.

That said motion for a new trial and vacation of judgment was made upon the following grounds:

I.

That the Court erred in its decisions upon questions of law arising during the course of the trial.

II.

That the Court misdirected the jury in matters of law and fact.

III.

That the verdict of the jury is contrary to the law.

IV.

That the verdict of the jury is contrary to the evidence.

V.

That said verdict as to each and all of said defendants is not supported by the evidence. [111]

In the District Court of the United States, in and
for the District of Nevada.

No. 5610.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WM. BORDA,

Defendants.

Certificate of Attorneys to Bill of Exceptions.

We, the undersigned attorneys for the respective parties in the above-entitled action, do hereby certify that the foregoing bill of exceptions is full, true and correct, and that we approve of same and that the same may be presented to the Honorable E. S. Farrington for settlement and allowance.

Dated this 20th day of November, 1922.

O. G. KUKLINSKI,

HUSKEY & KUKLINSKI,

Attorneys for Defendants,

GEORGE SPRINGMEYER,

U. S. Attorney. [112]

In the District Court of the United States, in and
for the District of Nevada.

No. 5610.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WM. BORDA,
Defendants.

Certificate of Judge to Bill of Exceptions.

The foregoing was prepared and submitted to me as a bill of exceptions by the defendant November 20, 1922, and I do now, in pursuance of the foregoing stipulation of George Springmeyer, U. S. Attorney for the District of Nevada, certify that it is full, true and correct, and has been settled and allowed and is made a part of the record in this cause.

Done in open court this 20th day of November, 1922.

E. S. FARRINGTON,
Judge.

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and Wm. Borda, Defendants. Bill of Exceptions. Filed Nov. 20, 1922. E. O. Patterson, Clerk. Huskey & Kuklinski, Attorneys at Law, Reno, Nevada.
[113]

In the District Court of the United States for the
District of Nevada.

**Certificate of Clerk U. S. District Court to Trans-
script of Record.**

United States of America,
District of Nevada,—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants, said case being No. 5610 on the docket of said court.

I further certify that the attached transcript, consisting of 121 typewritten pages numbered from 1 to 120, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such clerk in the city of Carson, State and District aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to \$54.80, has been paid to me by Messrs. Huskey & Kuklinski, attorneys for the defendants.

And I further certify that the original writ of error, and the original citation, issued in this cause, are hereto attached.

WITNESS my hand and the seal of said United States District Court, this 2d day of December, A. D. 1922.

[Seal]

E. O. PATTERSON,

Clerk, U. S. District Court, District of Nevada.

[114]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,

Defendants.

Citation on Writ of Error (Original).

The United States of America,—ss.

The President of the United States to the United
States of America, GREETING: To the
United States of America:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, within 30 days from the date of this writ, pursuant to a writ of error duly allowed by the District Court of the United States in and for the District of Nevada and filed in the clerk's office of said court on the 28th day of August, A. D. 1922, in a cause wherein J. Bilboa

and William Borda are appellants and you are appellee, to show cause, if any, why the judgment and decree rendered against the said appellants as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable E. S. FARRINGTON, Judge of the District Court of the United States, in and for the District of Nevada, this 28th day of August, A. D. 1922, and of the Independence of the United States the one hundred and forty-seventh.

E. S. FARRINGTON,
District Judge. [115]

[Seal]

Attest: E. O. PATTERSON,
Clerk.

By O. E. Benham,
Deputy.

Service of the within citation and receipt of a copy is hereby admitted this 29th day of August, A. D. 1922.

GEORGE SPRINGMEYER,
U. S. Attorney, District of Nevada. [116]

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Citation on Writ of Error (Original). Filed Aug. 28th, 1922. E. O. Patterson, Clerk. [117]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. BILBOA and WILLIAM BORDA,
Defendants.

Writ of Error (Original).

United States of America,—ss.

The President of the United States, to the Honorable Judge of the District Court of the United States of America, in and for the District of Nevada, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, wherein the United States is plaintiff and J. Bilboa and William Borda are defendants, a manifest error hath happened, to the great damage of the said J. Bilboa and William Borda, the defendants, as by the indictment in said cause and the record of proceedings therein appear. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals

for the Ninth Circuit, at San Francisco, California, together with this writ, so that you have the same in the said United States Circuit Court of Appeals at San Francisco, California, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to [118] the laws and customs of the United States should be done.

WITNESS the Honorable E. S. FARRINGTON, Judge of the said United States District Court of the District of Nevada, the 28th day of August, in the year of our Lord one thousand nine hundred and twenty-one.

[Seal]

E. O. PATTERSON,

Clerk of the United States District Court for the District of Nevada.

Allowed by:

_____. [119]

[Endorsed]: No. 5610. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. J. Bilboa and William Borda, Defendants. Writ of Error (Original). Filed Aug. 28, 1922. E. O. Patterson, Clerk.

[Endorsed]: No. 3947. United States Circuit Court of Appeals for the Ninth Circuit. J. Bilboa and William Borda, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Nevada.

Received December 4, 1922.

F. D. MONCKTON,
Clerk.

Filed December 6, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

